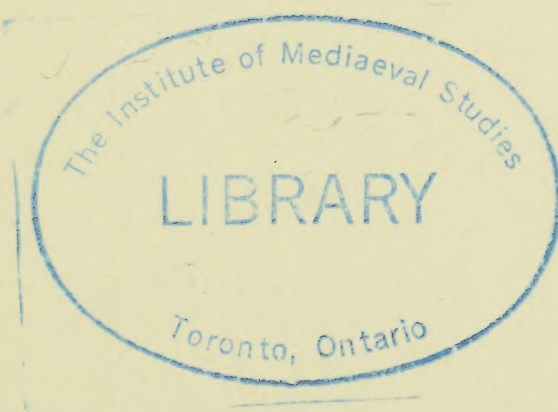


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THE  
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VOLUME XXXIV

FOR THE YEAR 1918



# Selden Society

FOUNDED 1887

TO ENCOURAGE THE STUDY AND ADVANCE THE KNOWLEDGE  
OF THE HISTORY OF ENGLISH LAW.

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**The Pear Books Series.**

VOL. XIII.





# Selden Society

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## YEAR BOOKS OF EDWARD II.

VOL. XIII.

### 6 EDWARD II.

A.D. 1312-1313

EDITED  
FOR THE SELDEN SOCIETY

BY

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AND

LUDWIK EHRLICH

B.LITT. OXON., DR. JUR. LWÓW, LECTURER IN THE UNIVERSITY OF CALIFORNIA

*He [Serjeant Maynard] had such a relish of the old year books that he carried one in his coach to divert him in travel, and said he chose it before any comedy.*

ROGER NORTH

*C'est toute la tragédie, toute la comédie humaine que met en scène sous nos yeux l'histoire de nos lois. Ne craignons point de le dire et de le montrer*

ALBERT SOREL

LONDON

BERNARD QUARITCH, 11 GRAFTON STREET, W.

1918

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## LIST OF MANUSCRIPTS

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B = British Museum, Additional MS. 35094

C = British Museum, Additional MS. 37658

E = British Museum, Harleian MS. 2184

F = British Museum, Harleian MS. 572

G = Cambridge University Library, Gg. 5, 20

M = Cambridge University Library, Ff. 2, 12

P = British Museum, Harleian MS. 835

R = Cambridge University Library, Dd. 9, 64

T = British Museum, Harleian MS. 3639

X = Bodleian Library, Tanner MS. 13

Z = Lincoln's Inn, Hale MS. 137 (2)

The Cases in this volume are arranged in the order followed by the Register of writs.

# INTRODUCTION.

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## 1. THE RELATIONS BETWEEN MANUSCRIPTS OF REPORTS.

IN addition to manuscripts used by previous editors, we have made use of one more, namely, Harleian MS. 572. It has yielded a new case (No. 14), which, however, may belong to some other term since we did not succeed in tracing its Record, and several new versions of cases reported in other manuscripts (*e.g.* No. 75, 77, 91, 112). It contains also many interesting variants for versions extant in other collections. Unfortunately, this new manuscript (which we have called *F*) has a gap in the middle of the term, and so it is impossible to say how many cases may have been contained in the missing folio or folios.

In transcribing the text of the reports we have adhered to the following rules:—

The text of a report which was selected as the main text of any one version has been transcribed, so far as possible, without changes. As to the variants, we have inserted in footnotes those which did not amount simply to differences in spelling; we have however noted differences in the spelling of names, or such differences as might convey different meanings (*e.g.* *ces* and *ses*). The headnotes were selected from the manuscript which seemed to have the best headnote among the manuscripts containing the same version; other headnotes have been noted in the footnotes. On the whole, we thought that it may be better to give too many than too few variants, since every scholar using this edition may find in the variants some new meaning that may have escaped the editors' attention.

In selecting the versions which were to be published for each case we have refrained from limiting rigidly their number. This question has been discussed before (Y.B. S.-S. iii. *Introd.* pp. xxxiii ff.), but we thought that *for once* it was desirable to present readers with a more or less complete collection of the versions represented by our



group of manuscripts. To begin with, we consider that every new version may contain some material which may prove useful to students of the Year Books. Secondly, there may be differences which, though they do not bear directly on points of law, may throw much light on the relation between different manuscripts, perhaps even on the way in which the reports of the Year Books were compiled. For instance, how were reports condensed? The type of condensed reports is represented, as we know, by the Bodleian manuscript Tanner 13 (called X). The precursor of abridgments is Lincoln's Inn manuscript Hale 137(2) (called Z). Even where these two manuscripts do not give new points, it is interesting to observe how they present those that are found in the extended reports. As to the other manuscripts, we thought that by combining parts of several reports one is enabled sometimes to construct a new report covering approximately different points touched upon in different manuscripts.

To illustrate our meaning, let us take a case printed in this volume which is likely to arouse criticism on account of a superabundance of material, since it is represented in eight versions—*Tiltone v. Dawy* (p. 8). Version I is taken from *G* and compared with *B*, *F* and *M*. This first version branches off into two—one represented by *G* and the other one by *B*, *F* and *M*. The whole first version is given, however, only by *G*. The three other manuscripts contain only its second part. The full version, which we shall call the *G* version, is too long to be reproduced here. Suffice it to say that the case is one of dower; after the demand has been briefly described, the tenant pleads that the husband of the demandant was never seised; the demandant replies by producing a fine, and a discussion arises whether the averment offered by the tenant goes to the avoidance of the fine. Here the first part, represented by *G* only, ends; the second part relates to proceedings on another day, when the tenant demanded the view. The demandant opposes this request because the tenant has entered by the demandant's late husband; the tenant offers to aver that it was not so, but the demandant declines the averment and relies on the fine. Thereupon view is refused. Now the tenant pleads that the demandant's husband was not seised on the day of the wedding or afterwards, but this plea cannot be admitted since it is contrary to the fine, which is matter of record. The demandant offers to aver that on the day of the fine she was the wife of the deceased; the tenant vouches to warranty; according to *G* (in which this last part is less explicit) she vouches a son of the demandant; the voucher is received and the report summarises the vouchee's plea and the final issue, and states that 'that happened in Trinity Term in the thirteenth year'; according to the *B*, *F* *M*.

version (which is borne out by the record), the tenant vouched the two sons of the demandant ; the plea of the vouchees as well as the final issue and decision are stated more fully.

So much for Version I. Version II is one of the two versions in *X*. It seems to correspond, on the whole, in a very condensed form, with the *B*, *F*, *M* ramification of I.; for instance where *G* says :

*Herle.* You are a stranger to the fine and albeit we would deny the fine you would not be a party to the trying of the fine,

*X* says simply :

*Denom.* You are a stranger to the fine.

But there is more than pure condensation. Version I attributes to 'Inge,' or 'Inghe,' or 'Ingg,' two rather lengthy statements on the admissibility of fines and on the statute *de finibus*. The tenant traversed the seisin of the demandant's husband. Thereupon the report in I. says :

*Inge.* Of something that is of record one must not take an averment. Hence of that part of your averment which is so general the Court is certified by (matter of) record. And as to whether she was his wife at that time etc. they are willing to aver it, and you refuse that (averment). Moreover if your averment were received that would go to the avoidance of the fine, and the statute orders that those averments which (go) to the avoidance of the fine be not received. And they tender the averment that she was his wife on the day of the fine etc. (and that is) not in disagreement with the fine which proves the seisin of her husband. Therefore it seems that their answer is sufficiently full.

Here *Scrope* for the tenant makes remarks about the statute which had been referred to by *Inge*, and thereupon the report proceeds :

*Inge.* He that wishes to avail himself of the statute *Quia fines* must be privy to the fine. That statute must be taken as relating to those who were parties to the fine, by which fine we are certified of the husband's seisin. Therefore do you want the averment which they tender ? And if not, you shall have your judgment presently.

This second statement is attributed by *B* and *M* to *Passeley*, who was a counsel. Yet it is reasonably clear that these are statements of a judge. He addresses one party as 'you.' and refers to the other



as 'they'; he asks one party whether he wants the averment offered by the other party, 'and if not you shall have your judgment presently.' X, however, seems to give us more definite information. It has, instead of the whole discussion between *Inge* and *Scrope*, the short statement :

And they were ousted of the averment by BEREฟอร์ด (C.J.).

This dispels all doubts. But is the manuscript right in attributing the statement to BEREฟอร์ด C.J.? *Inge* was on the Common Bench from Hilary term of the sixth year. The discussion may have easily taken place in that term, since *G* tells us that it was 'on another day,' and that issue was finally joined as late as the thirteenth year of the reign. Besides, *Inge* is mentioned a couple of times in the personal notes of MS. Y (Add. 35116) as a judge, and as these notes refer to cases tried in the third and fourth years of Edward II, it seems as if he acted sometimes in a judicial capacity before Hilary term 1313. Perhaps, therefore, X simply substituted *Bereford* for *Inge*, as in an earlier part it substituted *Denh.* for *Herle* of *G*, *F*, while *B*, *M* have *Scrop* (in the statement 'You are a stranger to the fine'). But perhaps the writer of X did not substitute *Bereford* for *Inge*: he may have had a version of the case before him in which these were the names used, and then that version would be similar to the one represented by I., but not identical; moreover, since *G* and *F* have one name, *B* and *M* another, and X a third for the counsel who made the same statement, and since X has a different name for the judge, it seems likely that X follows a different manuscript of the same version. It should be noted that of the two statements attributed to *Inge* by I., only the first is so attributed by all four manuscripts; the second statement is attributed by *B* and *M* to *Passeley*, who was counsel and not judge. Where the wording is identical in the manuscripts, we may well confine ourselves to inserting the different names in footnotes. But where the one version is condensed, we want to know from which of the fuller versions it was condensed, or to which it corresponds. That is best done by comparing both the full and the condensed version, and hence we have decided to print the condensed versions alongside of the full ones. This will enable readers to form their own opinion as to the relation of the manuscripts, and consequently will make it possible, at a future date, to settle difficulties such as the one arising from the mention of *Inge*.

Let us review the other versions. III is taken from *R*. It gives again different names for the two statements attributed to *Inge* in I.: the first one is partly attributed to BEREฟอร์ด C.J., but it is fuller

and has more legal points. *Inge*, however, is also credited with a statement partly corresponding with what was attributed to him in I.:

*Inge*. They put forward the fine which proves quite the contrary of what you say. That fine is of record and as such cannot be avoided by averment of the country, either by those who are in any way parties to the fine, or by anyone else etc.

*Passeley*. (She) that brings the writ is not (a party to the fine) but is a complete stranger.

BEREFORD C.J. There are certain fines levied in this Court in such a form, without delivery of seisin, which will never be avoided by the parties (to them) or by their heirs, by averment of the country. And they have put forward a fine which you have granted, and against your own deed which you have granted you cannot get to any averment etc. In this case they offer to aver that at the time when the conusance was made, and also before the conusance and after it, Margery was the wife of John. You refuse that averment, therefore we ask whether you want to say something else.

*Scrope*. Sir, if you consider that he can oust us, by reason of this fine, from this averment which is in itself so wide and so high, then we await your award.

BEREFORD C.J. You shall never get to the averment against the fine.

And then STANTON J. began to rehearse the plea and would have given judgment etc.

*Scrope*. Sir, we will say something else . . .

This last incident by itself would have been enough, we think, to warrant the reproduction of the whole text. But it is obvious that now the relation of the manuscripts appears in a different light. It seems to have been BEREFORD C.J., and not *Inge*, who ousted the tenant of her averment. In so far *X* was right. Was it a condensation of a copy different from that from which *G* and *F* were taken?

A similar observation applies to the two following versions (IV and V), both of them related to III. IV is the second version in *X*, and V is taken from *P*. Version IV (from *X*) has special interest because of a final remark. Version III (from *R*) ends as follows:

And afterwards the voucher was received by BEREFORD C.J.

And then Margery came presently to the bar and rendered dower to herself.



The version in *X* ends as follows :

And the voucher was received by BEREFORD C.J.

And Margery as guardian was ready in the Court, and came to the bar, and warranted, and rendered dower to herself.

And it seemed strange (*et mirum fuit*) that she was received to warrant although the tenant had not shown a deed.

Two questions arise at once. First, does *X* represent a condensation of the report in *R*, or of some other copy to which *R* is very closely related, from which it is perhaps derived? If the former be the case, why should the writer of *X*, who otherwise shortens everything he can, expand the statements that Margery came to the bar and rendered dower to herself? Why should he add on his own initiative that she was ready in the Court (obviously not a very important addition from the legal point of view), and why should he explain that she was there 'as guardian,' since this appears clearly from the preceding lines of the text?

Secondly, to whom did it seem strange that she was received to warrant although the tenant had not shown a deed? To the compiler of *X* or to a reporter from whose text both *R* and *X* are derived? Why did he use *fuit* instead of *est*? Or did the event seem strange to those who witnessed it? In other words, was there a note to that effect on the sheet from which the report in *X* was condensed?

This is instructive if we try to establish the relation between *P* and *R*, since *R* is related to *P* more closely than to any other manuscript. It is, of course, desirable to give the student an opportunity of judging for himself whether the condensation in *P* of the report in *R* was independent work, or whether it was only the condensation of a copy similar to IV.

VI (taken from *E*) represents an entirely different version. The statements attributed to *Inge* in I. and to him and BEREFORD C.J. in III are given here as follows :

*Inge*. It is not permissible to aver by the country whether the husband was seised or not, now that the fine witnesses it. Therefore there is no dispute except only as to the time, to wit, whether or no she was his wife when he was seised by the fine.

BEREFORD C.J. In an ordinary case no one would oust you of this averment. But this is a special case, in which she puts forward a fine which witnesses the seisin of her husband, and if you were received to such an averment you would avoid the fine. Therefore the averment which you tender is not receivable, and

he tenders you the averment that at the time when the fine was levied she was his wife. Therefore, do you want the averment?

And ultimately they waived one averment and the other, and they vouched to warranty. And the voucher stood.

And thus they had pleaded to the action before the voucher.

This version evidently goes back to an independent report. The same may be said of the following version (VII) taken from *T*. Notice, for instance, its conclusion :

BEREFORD C.J. The fine is of record and witnesses to the seisin of the husband. Therefore we have to inquire nothing more except whether she was his wife at the time when the fine etc.

Therefore twelve etc.

This is positively untrue. Issue was joined on the question whether the demandant held enough in the name of wardship. The version does not correspond with those formerly discussed.

Finally, Version VIII is simply a transcript from the Record, contained in *P*, which had also a condensation (Version V) of the report in *R*, printed as III. The Record is inserted in our edition, but is compared with the original roll. The writer of the *P* manuscript knew that the Record referred to the same case, and made notes to that effect. How did he find the Record? There is no note in *R* which would have helped him.

In conclusion it may be stated that there is only one objection to publishing versions in such detail—namely, the great bulk to which an edition of this kind is bound to swell. Unfortunately it is a very weighty objection when one takes into account the length of the prospective Year Books Series. Although, therefore, editors will in most cases have to restrict their choice of versions it seemed desirable to give the cases of this particular term at greater length as material for conclusions in regard to the filiation of versions and manuscripts.

As to our translation, it may be remarked only that we have adhered, with a few exceptions, to the custom maintained in the edition of the former volumes, that proper names should be taken from the Records. In some cases, however, it seemed important to retain the mistaken names, as they testify to the peculiar way in which reporters treated their material.

Let us take, for example, the case of *Tremur and others v. Giffard* (below, p. 211). The first paragraphs of the first five versions run, if translated literally :



## I.

Catherine, Lawrence, and Sumeld brought a writ of cosinage against one William and demanded certain tenements of which one Simon, their cousin, was seised in his demesne on the day on which he died. Catherine did not sue and was severed, Lawrence and Sumeld counted as to the two parts and said that one Simon, their cousin, was seised of the whole ; from S(imon) because he died without heir of his body (it) descended to Maud, Agnes, and Felise, as to sisters etc., from Maud the fee and the demesne of her share descended to Roger Petidege as to a son etc., from Roger to Roger as to a son, from Roger to Catherine who does not sue now for her share, as to a daughter etc. From Agnes the fee and the demesne of her share descended to one Michael of Tremur as to a son, from Michael to Osborn as to a son, from Osborn to John as to a son, from John to Lawrence who now sues for his share, as to a son etc. From Felise the fee and the demesne of her share descended to one Sumeld as to a daughter, from Sumeld to Simon as to a son, from Simon to Sumeld who now sues for her share, as to a daughter.

## II.

One Gunhild and A., her parcener, brought a writ of cosinage against Nicolas Giffard and E. his wife, and took their title on the seisin of one Simon, and from Simon because etc. there descended the fee and the demesne to Felise and to Agnes as to two sisters and to one heir, from Felise etc. to Walter as to a son etc., from Walter to William as to a son etc., from William to Gunhild who now demands together with her parcener, as to a daughter ; from Agnes to William as to a son, from William to Robert as to a son, from Robert to Gilbert as to a son, from Gilbert to this . . . who now demands as to a daughter, together etc.

## III.

Three parceners together with the husband of one of the parceners brought their writ of cosinage against one Richard and Isabel his wife, on the death of one Simon, and traced the descent from Simon because he died without heir of his body to Alice, Denyse and Agnes, from A. it descended to I., from I. to William who does not sue (they are severed by award), from A.

to Thomas, from Thomas to Maud who sues together with her husband.

#### IV.

John and Maud brought their writ of cosinage, on the seisin of one Simon, tracing descent to Agnes as to a sister, and from Agnes tracing divers descents down to the demandants.

#### V.

From Simon because etc. (it) descended to Agnes, Alice, and Joan as to three sisters and one heir, from Agnes etc. as to her share to B., from B. to C., from C. to D., from D. to K. who does not sue. From Alice etc. as to her share to I., from I. to G. From Joan as to her share to M., from M. to C., from C. to I., from I. to Laura.

There is much confusion in the names. But is it not important for the reader interested to observe it, and to draw his conclusions as to the indifference of the reporters to the actual framework of the case?

Moreover, though sometimes the changes in the proper names are due to pure carelessness, at other times 'there is method in them.' This has been noted in the preface to a former volume (Y.B. S.-S. vol. iii. Introd. p. 57): 'Names are deliberately changed. Sometimes, though by no means always, we can see why this is done. If there are two Maries in a case, it is better to call one of them Sarah; if there are two Christianas in a case, it is better to call one of them Beatrice.' An example of such a substitution may be found in the present volume in *Moubray v. Benet* (below, p. 1, note 3) and in *Heslartone v. Saluayn* (below, p. 48, note 3).

A detailed description of the manuscripts containing reports for the reign of Edward II has been published in the Selden Society Series (vol. vi. Intr. pp. xxxvi to lxii) and also a statement on the relations of the manuscripts to one another (*ibid.* pp. lxii-xcv). The latter covers only the period from the first to the fourth year of the reign. An investigation of the relation between the different manuscripts relating to any given term is obviously necessary in order to come to a definite conclusion as to the process of reporting and multiplying copies of the original reports.

The questions which have to be answered are, we think, three:

Firstly, is it probable that there was one common manuscript from which all the manuscripts now available are derived? If so, is it known to us?



Secondly, if there was no one common manuscript, can we establish any groups which can be traced each to a common ancestor? If so, are these groups groups of manuscripts, or can we distinguish in one manuscript parts derived from different originals?

Thirdly, was any one known manuscript copied or condensed entirely from another known manuscript?

Before we attempt to answer these questions for the present term, or at least outline our suggestions in this respect, it may be advisable to give a few statistics as to the cases reported in our term. These statistics only claim approximate correctness, and the same is true of the tables which we give below. In several cases small mistakes were detected so late that it would have required a disproportionately large expenditure of time and work to correct all the tables affected by it. Suppose, for instance, that the first study of a manuscript suggests that it contains, say, fifty cases. After they have been numbered and arranged in tables, which show their distribution as compared with the distribution in other manuscripts, we find that, for instance, cases 9 and 10 are really two parts of one report, while in another manuscript case 23, which was taken to be one, represents, in fact, two cases copied continuously. Such mistakes would make it necessary to rearrange all the tables, whereas by omitting, in the first instance, case 10 from the table and by adding, in the second instance, case 23a after case 23 the material result is not changed and very much work is saved. Similarly, there may be slight mistakes in the statistics, but we hope that none of them will affect the real value of the results.

Of some 116 cases which will be published in this and the following volume, as representing Michaelmas Term of the sixth year, there are reported—

In one manuscript only . . . . .	30 cases
In two manuscripts . . . . .	21 „
In three „ . . . . .	13 „
In four „ . . . . .	14 „
In five „ . . . . .	7 „
In six „ . . . . .	19 „
In seven „ . . . . .	2 „
In eight „ . . . . .	5 „
In nine „ . . . . .	3 „
In ten „ . . . . .	1 case
In eleven „ . . . . .	1 „

It should be added, however, that of those reported in two manuscripts five are reported in *X* (the condensed report) and in one other manuscript, and two are reported in *Z* (the abridgment) and in one other manuscript. Of the former group, three are reported in *P* and *X*, and two in *F* and *X*; one case is reported in *P* and *Z*, and one by *G* and *Z*.

In the present edition we have arranged the reports in the following way. There are printed—

In one version	.	.	.	.	.	.	44 cases
(including the 30 cases reported once only)							
In two versions	.	.	.	.	.	.	26 „
In three	„	.	.	.	.	.	16 „
In four	„	.	.	.	.	.	15 „
In five	„	.	.	.	.	.	5 „
In six	„	.	.	.	.	.	5 „
In seven	„	.	.	.	.	.	3 „
In eight	„	.	.	.	.	.	2 „

In order to establish the relations between the different manuscripts, we had to take as a basis, not each manuscript, but each report in each manuscript. Consequently, for each manuscript, or rather for that part of it which deals with the present term, we have compiled a table showing with which cases in the present volume the cases in the given manuscript correspond, and also with which cases in the other manuscript they correspond. Finally, those cases in the other manuscript which are included in the present edition in the same version are starred; when, therefore, the reader compares the sequence of reports in any given manuscript with that of the reports in any other manuscript, and finds that the cases following one another in any given manuscript correspond with cases following in the same order in some other manuscript, and also that the latter are starred, *i.e.* are closely enough related to be included in the same versions, the inference will be that the two parts of the manuscripts are either derived from a common source, or one of them from the other. Then, by comparing the text with the variants as printed, it will be possible to establish whether the two manuscripts were copied one independently of the other, or whether one is a copy of the other.

The tables are, therefore, intended to enable the reader to form a judgment of his own. We venture, however, to suggest some few general remarks as to each manuscript. It may be added that there is no table for manuscript *B*, since it corresponds with cases 17–38 of



manuscript *M*, so that the table relating to the latter includes the former. There is also no table for manuscript *Z*, which is arranged in the alphabetical order of writs, and is only an abridgment, so that neither the distribution of cases in it can help us establish from what manuscripts it was derived, nor can it correspond with any one version of our reports. For the same reason the tables relating to all the other manuscripts do not contain references to *Z*.

The following table is intended to give the reader a general idea of the arrangement of reports into versions. It gives the cases of the present edition in the order in which they are printed, gives first an alphabetical list of the manuscripts in which each case is reported and then the manuscripts on which each version is based. The manuscript from which the text of each version is derived is mentioned first, and it is understood that the variants from the others are referred to in footnotes, unless there is special mention that they have also been used for part of the text.

No. in this Edition	Reported in MSS.	Versions taken from MSS.							
		I	II	III	IV	V	VI	VII	VIII
1	<i>BEFGMX</i>	<i>GF</i>	<i>E</i>	<i>MB</i>	<i>X</i>	..	..	..	..
2	<i>P</i>	<i>P</i>	..	..	..	..	..	..	..
3	<i>T</i>	<i>T</i>	..	..	..	..	..	..	..
4	<i>BEFGMP(3)</i>	<i>GBFM</i>	<i>X</i> <sup>2</sup>	<i>R</i>	<i>X</i> <sup>1</sup>	<i>P</i>	<i>E</i>	<i>T</i>	<i>P</i>
	<i>RMX(2)</i>								(record)
5	<i>BFMX</i>	<i>MBF</i>	<i>X</i>	..	..	..	..	..	..
6	<i>BCMRTX</i>	<i>R</i>	<i>X</i>	<i>MB</i>	<i>TC</i>	..	..	..	..
7	<i>CPT</i>	<i>PCT</i>	..	..	..	..	..	..	..
8	<i>PX</i>	<i>P</i>	<i>X</i>	..	..	..	..	..	..
9	<i>PR</i>	<i>RP</i>	..	..	..	..	..	..	..
10	<i>P</i>	<i>P</i>	..	..	..	..	..	..	..
11	<i>P</i>	<i>P</i>	..	..	..	..	..	..	..
12	<i>G</i>	<i>G</i>	..	..	..	..	..	..	..
13	<i>FG</i>	<i>GF</i>	..	..	..	..	..	..	..
14	<i>F</i>	<i>F</i>	..	..	..	..	..	..	..
15	<i>CMPRTX(2)</i>	<i>PCMT</i>	<i>X</i> <sup>2</sup>	<i>R</i>	<i>X</i> <sup>1</sup>	..	..	..	..
16	<i>CGT</i>	<i>G</i>	<i>CT</i>	..	..	..	..	..	..
17	<i>CPT</i>	<i>TCP</i>	..	..	..	..	..	..	..
18	<i>CPTZ</i>	<i>CPT</i>	<i>Z</i>	..	..	..	..	..	..
19	<i>EMPR</i>	<i>PR</i>	<i>M</i>	<i>E</i>	..	..	..	..	..
20	<i>EMPRTX</i>	<i>R</i>	<i>PMT</i>	<i>E</i>	<i>X</i>	..	..	..	..
21	<i>C</i>	<i>C</i>	..	..	..	..	..	..	..
22	<i>G</i>	<i>G</i>	..	..	..	..	..	..	..
23	<i>BCFMTX</i>	<i>MBF</i>	<i>X</i>	<i>CT</i>	..	..	..	..	..
24	<i>FG</i>	<i>GF</i>	..	..	..	..	..	..	..
25	<i>CFMTXZ</i>	<i>CT</i>	<i>MF</i>	<i>X</i>	<i>Z</i>	..	..	..	..
26	<i>EFMPX</i>	<i>P</i>	<i>X</i>	<i>MF</i>	<i>E</i>	..	..	..	..
27	<i>FMX</i>	<i>MF</i>	<i>X</i>	..	..	..	..	..	..
28	<i>BEFMPX</i>	<i>E</i>	<i>MBF</i>	<i>X</i>	<i>P</i>	..	..	..	..

No. in this Edition	Reported in MSS.	Versions taken from MSS.							
		I	II	III	IV	V	VI	VII	VIII
29	<i>BCFGMPT</i>	<i>MBFG</i>	<i>PCT</i>	..	..	..	..	..	..
30	<i>CEPRT</i>	<i>E</i>	<i>CPT</i>	<i>R</i> (record)	..	..	..	..	..
31	<i>CG</i>	<i>C</i>	<i>G</i>	..	..	..	..	..	..
32	<i>CGTX</i>	<i>G</i>	<i>CT</i>	<i>X</i>	..	..	..	..	..
33	<i>CPRT</i>	<i>PR</i>	<i>TC</i>	..	..	..	..	..	..
34	<i>X</i>	<i>X</i>	..	..	..	..	..	..	..
35	<i>X</i>	<i>X</i>	..	..	..	..	..	..	..
36	<i>E</i>	<i>E</i>	..	..	..	..	..	..	..
37	<i>CEMPRX</i>	<i>M</i>	<i>X</i>	<i>PR</i>	<i>E</i>	<i>C</i>	..	..	..
38	<i>CEFGPRTXZ</i>	<i>PR</i>	<i>E</i>	<i>GF</i>	<i>X</i>	<i>CT</i>	<i>Z</i>	..	..
39	<i>G</i>	<i>G</i>	..	..	..	..	..	..	..
40	<i>X</i>	<i>X</i>	..	..	..	..	..	..	..
41	<i>P</i>	<i>P</i>	..	..	..	..	..	..	..
42	<i>PZ</i>	<i>P</i>	<i>Z</i>	..	..	..	..	..	..
43	<i>GP</i>	<i>P</i>	<i>G</i>	..	..	..	..	..	..
44	<i>EFPX</i>	<i>EF</i>	<i>X</i>	<i>P</i> (record)	..	..	..	..	..
45	<i>FMX</i>	<i>MF</i>	<i>X</i>	..	..	..	..	..	..
46	<i>CPT</i>	<i>TCP</i>	..	..	..	..	..	..	..
47	<i>CPRT</i>	<i>CT</i>	<i>PR</i>	..	..	..	..	..	..
48	<i>CP(2)RT</i>	<i>P<sup>1</sup>R</i>	<i>P<sup>2</sup>CT</i>	..	..	..	..	..	..
49	<i>BEFGMX</i>	<i>GF</i>	<i>E</i>	<i>MB</i>	<i>X</i>	..	..	..	..
50	<i>CEPRTX</i>	<i>PR</i>	<i>TC</i>	<i>E</i>	<i>X</i>	..	..	..	..
51	<i>PX</i>	<i>P</i>	<i>X</i>	..	..	..	..	..	..
52	<i>BFMPRX</i>	<i>RP</i>	<i>MBF</i>	<i>X</i>	..	..	..	..	..
53	<i>CFMPTX</i>	<i>TCP</i>	<i>MF</i>	<i>X</i>	..	..	..	..	..
54	<i>G</i>	<i>G</i>	..	..	..	..	..	..	..
55	<i>P</i>	<i>P</i> (record)	..	..	..	..	..	..	..
56	<i>CT</i>	<i>TC</i>	..	..	..	..	..	..	..
57	<i>FG</i>	<i>GF</i>	..	..	..	..	..	..	..
58	<i>BFM</i>	<i>MBF</i>	..	..	..	..	..	..	..
59	<i>BFM</i>	<i>MBF</i>	..	..	..	..	..	..	..
60	<i>CEP</i>	<i>P</i>	<i>E</i>	<i>C</i>	..	..	..	..	..
61	<i>BCEFPMP</i> <i>TX(2)</i>	<i>TC</i>	<i>X<sup>1</sup></i>	<i>P</i>	<i>E</i>	<i>BFM</i>	<i>X<sup>2</sup></i>	..	..
62	<i>BC(2)E(2)</i> <i>GMPT(2)XZ</i>	<i>GP</i>	<i>E<sup>1</sup></i>	<i>MB</i>	<i>X</i>	<i>C<sup>1</sup>T<sup>1</sup></i>	<i>C<sup>2</sup>T<sup>2</sup></i>	<i>E<sup>2</sup></i>	<i>Z</i>
63	<i>EPRT</i>	<i>E</i>	<i>R</i>	<i>PT</i>	..	..	..	..	..
64	<i>BEFMPRX</i>	<i>E</i>	<i>MBF</i>	<i>X</i>	<i>PR</i>	..	..	..	..
65	<i>G</i>	<i>G</i>	..	..	..	..	..	..	..
66	<i>FMPTX</i>	<i>MFPT</i>	..	..	<i>X</i>	..	..	..	..
67	<i>CFGMRX(2)</i>	<i>MF</i>	<i>X<sup>2</sup></i>	<i>G</i>	<i>R</i>	<i>X<sup>1</sup></i>	<i>C</i>	..	..
68	<i>CGPRTZ</i>	<i>R</i>	<i>G</i>	<i>PCT</i>	<i>Z</i>	..	..	..	..
69	<i>P</i>	<i>P</i>	..	..	..	..	..	..	..
70	<i>GPRX</i>	<i>G</i>	<i>PR</i>	<i>X</i>	..	..	..	..	..
71	<i>FX</i>	<i>F</i>	<i>X</i>	..	..	..	..	..	..
72	<i>CFMPTX(2)</i>	<i>TC</i>	<i>MF</i>	<i>X<sup>2</sup></i>	<i>P</i>	<i>X<sup>1</sup></i>	..	..	..
73	<i>BFMPRX</i>	<i>MBF</i>	<i>X</i>	<i>PR</i>	..	..	..	..	..
74	All MSS.	<i>MBF</i>	<i>X</i>	<i>PR</i>	<i>G</i>	<i>CT</i>	<i>E</i>	<i>Z</i>	..
75	<i>CEFMPRTXZ</i>	<i>PCMT</i>	<i>R</i>	<i>F</i>	<i>E</i>	<i>X</i>	<i>Z</i>	..	..



No. in this Edition	Reported in MSS.	Versions taken from MSS.							
		I	II	III	IV	V	VI	VII	VIII
76	<i>CEFMPTX</i>	<i>MF</i>	<i>PR</i>	<i>TC</i>	<i>E</i>	<i>X</i>	..	..	..
77	<i>CEFGPRTXZ</i>	<i>F</i>	<i>PR</i>	<i>TC</i>	<i>E</i>	<i>X</i>	<i>G</i>	<i>Z</i>	..
78	<i>CEPRT</i>	<i>PR</i>	<i>CT</i>	<i>E</i>	..	..	..	..	..
79	<i>CGPT</i>	<i>G</i>	<i>P</i>	<i>CT</i>	..	..	..	..	..
80	<i>PTZ</i>	<i>P</i>	<i>T</i>	<i>Z</i>	..	..	..	..	..
81	<i>P</i>	<i>P</i>	..	..	..	..	..	..	..
		(record)							
82	<i>FMRTX</i>	<i>MF</i>	<i>T</i>	<i>R</i>	<i>X</i>	..	..	..	..
83	<i>BCEFGMPRT</i> <i>X(2)</i>	<i>PR</i>	<i>X<sup>1</sup></i>	<i>GF</i>	<i>E</i>	<i>MB</i>	<i>X<sup>2</sup></i>	<i>CT</i>	..
84	<i>BCEFG(2)MT</i> <i>X</i>	<i>CT</i>	<i>MBF</i>	<i>G<sup>1</sup></i>	<i>G<sup>2</sup></i>	<i>X</i>	<i>E</i>	..	..
85	<i>PX</i>	<i>P</i>	<i>X</i>	..	..	..	..	..	..
86	<i>FPRX</i>	<i>PR</i>	<i>F</i>	<i>X</i>	..	..	..	..	..
87	<i>X</i>	<i>X</i>	..	..	..	..	..	..	..
88	<i>BFMX</i>	<i>MBF</i>	<i>X</i>	..	..	..	..	..	..
89	<i>BFG(2)MX</i>	<i>MBF</i>	<i>X</i>	<i>G<sup>1</sup></i>	<i>G<sup>2</sup></i>	..	..	..	..
90	<i>CEFPXZ</i>	<i>TC</i>	<i>F</i>	<i>X</i>	<i>Z</i>	<i>P</i>	<i>E</i>	..	..
91	<i>GZ</i>	<i>G</i>	<i>Z</i>	..	..	..	..	..	..
92	<i>CEFGPTX</i>	<i>PCT</i>	<i>E</i>	<i>GF</i>	<i>X</i>	..	..	..	..
93	<i>PR</i>	<i>RP</i>	..	..	..	..	..	..	..
94	<i>CT</i>	<i>CT</i>	..	..	..	..	..	..	..
95	<i>CF(2)GMTX</i>	<i>F<sup>2</sup></i>	<i>G</i>	<i>MF<sup>1</sup></i>	<i>X</i>	<i>TC</i>	..	..	..
96	<i>E<sup>2</sup></i>	<i>E<sup>2</sup></i>	<i>E<sup>1</sup></i>	..	..	..	..	..	..
97	<i>CT</i>	<i>TC</i>	..	..	..	..	..	..	..
98	<i>CFT</i>	<i>F</i>	<i>TC</i>	..	..	..	..	..	..
99	<i>BFMX</i>	<i>MBF</i>	<i>X</i>	..	..	..	..	..	..
100	<i>T</i>	<i>T</i>	..	..	..	..	..	..	..
101	<i>C</i>	<i>C</i>	..	..	..	..	..	..	..
102	<i>BMPRX</i>	<i>RP</i>	<i>BM</i>	<i>X</i>	..	..	..	..	..
103	<i>CT</i>	<i>TC</i>	..	..	..	..	..	..	..
104	<i>CT</i>	<i>CT</i>	..	..	..	..	..	..	..
105	<i>CT</i>	<i>C</i>	<i>T</i>	..	..	..	..	..	..
106	<i>CPT</i>	<i>CTP<sup>†</sup></i>	..	..	..	..	..	..	..
107	<i>CPT</i>	<i>TCP</i>	..	..	..	..	..	..	..
108	<i>G</i>	<i>G</i>	..	..	..	..	..	..	..
109	<i>T</i>	<i>T</i>	..	..	..	..	..	..	..
110	<i>PT</i>	<i>PT</i>	..	..	..	..	..	..	..
111	<i>FX</i>	<i>F</i>	<i>X</i>	..	..	..	..	..	..
112	<i>T</i>	<i>T</i>	..	..	..	..	..	..	..
113	<i>T</i>	<i>T</i>	..	..	..	..	..	..	..
114	<i>T</i>	<i>T</i>	..	..	..	..	..	..	..
115	<i>T</i>	<i>T</i>	..	..	..	..	..	..	..

† Different parts.

Let us begin the examination of single manuscripts with one which seems to be most distantly related to all the others, namely manuscript *E*.

MANUSCRIPT *E*

Brit. Mus. Harl. 2184

Case in MS. <i>E</i>	No. in this Edition	<i>B</i>	<i>C</i>	<i>F</i>	<i>G</i>	<i>M</i>	<i>P</i>	<i>R</i>	<i>T</i>	<i>X</i>
1	1	6	..	44	5	22	..	..	..	42
2	83	7	32	38	6	23	5	1	30	4, 31
3	84	9	10	31	3, 11	25	..	..	9 <sub>a</sub>	45
4, 6	62	10	6, 11	..	9	26	44	..	9	46
5	4	13	..	33	18	29	6, 27, 46	3	14	3, 49
6 (see 4)	..	..	..	..	..	..	..	..	..	..
7	49	8	..	37	7	24	..	..	..	44
8	77	..	17	14	22	..	8	6	15	6
9	50	..	30	..	..	..	34	24	29	24
10	60	..	15	..	..	..	35	..	..	..
11	19	..	..	..	..	12	36	25	..	..
12	26	..	..	21	..	13	9	..	..	8
13	76	..	19	20	..	10	30	22	..	10, 31
14	37	..	22	..	..	11	31-3	23	..	30
15	20	..	..	..	..	1	61	27	52	20
16	38	..	29	39	13	..	23	14	28	39
17, 23	97	..	..	..	..	..	..	..	..	..
18	78	..	33	..	..	..	38 <sub>a</sub>	26	31	..
19	74	14	35	1	12	30	24	20	34	50
20	90	..	28	25	..	..	41	34	27	..
21	61	1	27	41	..	17	13	..	23	13, 35
22	36	..	..	..	..	..	..	..	..	..
23	..	..	..	..	..	..	..	..	..	..
(see 17)	..	..	..	..	..	..	..	..	..	..
24	64	2	..	26	..	18	16	8 <sub>a</sub>	..	36
25	92	..	43	3	29	..	54	..	45	52
26	44	..	..	*7	..	..	39	..	54	..
27	28	18	..	10	..	34	22	..	..	57
28	75	..	49	11	..	3	60	13	51	19
29	63	..	..	..	..	..	51	18	42	..
30	30	..	40	..	..	..	48	29	39	..

It will be seen that only one of its thirty cases is so closely related to a report in another manuscript, namely *F*, as to be included in the same version. Apart from that, the first seven cases correspond in their arrangement, in a general way, with cases 6-13 in manuscript *B*, and, consequently, with cases 22-29 in manuscript *M*. The similarity is, however, only approximate.

Next, let us take two manuscripts which are rather closely related to one another, namely *C* and *T*.



MANUSCRIPT C  
Brit. Mus. Add. 37658

Case in Ms. C	No. in this Edition	B	E	F	G	M	P	R	T	X
1	79	..	..	..	2	..	(*)43	..	*1	..
2	103	..	..	..	..	..	..	..	*2	..
3	56	..	..	..	..	..	..	..	*3	..
4	6	22	..	..	..	38	..	2	*4	2
5	104	..	..	..	..	..	..	..	*6	..
6, 11	62	10	4, 6	..	9	26	44	..	*9,*10	46
7	23	12	..	32	..	28	..	..	*7	48
8	101	..	..	..	..	..	..	..	..	..
9	31	..	..	..	13a	..	..	..	..	..
10	84	9	3	31	3, 11	25	..	..	*9a	45
11(see6)	..	..	..	..	..	..	..	..	..	..
13	68	..	..	..	8	..	*45	28	*11	..
14	94	..	..	..	..	..	..	..	*12	..
15	60	..	10	..	..	..	35	..	..	..
16	32	..	..	..	10	..	..	..	*13	23
17	77	..	8	14	22	..	8	6	*15	6
18	16	..	..	..	21	..	..	..	*16	..
19	76	..	13	20	..	10	30	22	*17	29
20	67	..	..	16	15	7	..	7	..	7, 25
21	25	..	..	17	..	8	..	..	*18	26
22	37	..	14	..	..	11	31-3	23	..	30
23	97	..	..	..	..	..	..	..	*20	..
24	47	..	..	..	..	..	28	17	*21	..
25	72	..	..	22	..	14	10	..	*22	10, 31
26	95	..	..	24, 43	19	16	..	..	*24	33
27	61	1	21	41	..	17	13	..	*23	13, 35
28	90	..	20	25	..	..	41	..	*27	34
29	38	..	16	39	13	..	23	14	*28	39
30	50	..	9	..	..	..	34	24	*29	24
31	105	..	..	..	..	..	..	..	35	..
32	83	7	2	38	6	23	5	1	*30	4, 31
33	78	..	18	..	..	..	38a	26	*31	..
34	106	..	..	..	..	..	(*)42	..	*33	..
35	74	14	19	1	12	*30	*24	20	*34	50
36	33	..	..	..	..	..	18	12	*36	..
37	98	..	..	5	..	..	..	..	*37	..
38	21	..	..	..	..	..	..	..	..	..
39	17	..	..	..	..	..	*47	..	*38	..
40	30	..	30	..	..	..	*48	29	*39	..
41	49	..	..	..	..	..	29, (*)50	21	*41	..
42	107	..	..	..	..	..	*53	..	*44	..
43	92	..	25	3	29	..	(*)54	..	*45	52
44	46	..	..	..	..	..	*55	..	*46	..
45	7	..	..	..	..	..	*56	..	*43	..
46	18	..	..	..	..	..	*57	..	*48	..
47	29	21	..	36	31	..	*58	..	*49	..
48	53	..	..	12	..	2	*59	..	*50	18
49	75	..	28	11	..	(*)3	(*)60	13	*51	19
50	15	..	..	..	..	(*)4	(*)62	8	*53	12, 21

## MANUSCRIPT T. Brit. Mus. Harl. 3639

Case in MS. T	No. in this Edition	B	C	E	F	G	M	P	R	X
1	79	..	*1	..	..	2	..	43	..	..
2	103	..	*2	..	..	..	..	..	..	..
3	56	..	*3	..	..	..	..	..	..	..
4	6	22	*4	..	..	..	38	..	2	2
5	100	..	..	..	..	..	..	..	..	..
6	104	..	*5	..	..	..	..	..	..	..
7	23	12	*7	..	..	..	32	28	..	48
9, 10	62	10	*6 with 9, *11 with 10	4, 6	..	9	26	44	..	46
9a	84	19	*10	3	31	3, 11	25	..	..	45
10(see 9)	..	..	..	..	..	..	..	..	..	..
11	68	..	*13	..	..	8	..	*45	28	..
12	94	..	*14	..	..	..	..	..	..	..
13	32	..	*16	..	..	10	..	..	..	23
14	4	13	..	5	33	18	29	6, 27, 46	3	3, 49
15	77	..	*17	8	14	22	..	8	6	6
16	16	..	*18	..	..	21	..	..	..	..
17	76	..	*19	13	..	20	10	30	22	29
18	25	..	*21	..	17	..	8	..	..	26
19	112	..	..	..	..	..	..	..	..	..
20	97	..	*23	..	..	..	..	..	..	..
21	47	..	*24	..	..	..	..	28	17	..
22	72	..	*25	..	22	..	14	10	..	10, 31
22a	109	..	..	..	..	..	..	..	..	..
23	61	1	*27	21	41	..	17	13	..	13, 35
24	95	..	*26	..	24, 43	19	16	..	..	33
26	3	..	..	..	..	..	..	..	..	..
27	90	..	*28	20	25	..	..	41	34	..
28	38	..	*29	16	39	13	..	23	14	39
29	50	..	*30	9	..	..	..	34	24	24
30	83	7	*32	2	38	6	23	5	1	43, 1
31	78	..	*33	18	..	..	..	38a	26	..
32	80	..	..	..	..	..	..	38	..	..
33	106	..	*34	..	..	..	..	*42	..	..
34	74	14	*35	19	1	12	30	24	20	50
35	105	..	31	..	..	..	..	..	..	..
36	33	..	*36	..	..	..	..	18	12	..
37	98	..	*37	..	5	..	..	..	..	..
38	17	..	*39	..	..	..	..	*47	..	..
39	30	..	*40	30	..	..	..	*48	29	..
40	110	..	..	..	..	..	..	*49	..	..
41	48	..	*41	..	..	..	..	29, *50	21	..
42	63	..	..	29	..	..	..	*51	18	..
43	7	..	*45	..	..	..	..	*56	..	..
44	107	..	*42	..	..	..	..	*53	..	..
45	92	..	*43	25	3	29	..	*54	..	52
46	46	..	*44	..	..	..	..	*55	..	..
48	18	..	*46	..	..	..	..	*57	..	..
49	29	21	*47	..	36	31	37	*58	..	..
50	53	..	*48	..	12	..	2	*59	..	18
51	75	..	*49	28	11	..	*3	*60	13	19
52	20	..	..	15	..	..	*1	*61	27	20
53	15	..	*50	..	..	..	*4	*62	8	12, 21
54	66	..	..	..	*13	..	*5	*63	..	22



On the whole, not only does the arrangement of the cases in *C* correspond with that in *T*, but they mostly form the same version. Exceptions are presented by cases 8, 9, 20, and 22, which are short notes; by case 38, which is a note, supported by our note from the record, but containing only what the reporter could have found in the record itself, and case 15. It is therefore clear that the two manuscripts belong to one group; at least that, of all known manuscripts, *C* is related only to *T*, and to *P* and *M* only in so far as those manuscripts have versions common with *T*.

As to *T*, we cannot say that it is entirely dependent on *C*. It is true that its arrangement, on the whole, corresponds with that of *C*. The cases for which the two manuscripts do not have common versions are few. Such is case 5 (a short note on the authority of *Passeley*—*hoc consid(er)atur per Passeley*), case 19 (another short note), cases 14 and 32, and then cases 40, 42, 52, 54. Finally there is case 35, corresponding with case 31 of *C*, which will be discussed presently. But beginning with its case 38, and to its very end, manuscript *T* corresponds remarkably with cases 47 to 63 of manuscript *P*, not only because they form the same versions, but also in their arrangement. The resemblance is closer than between *C* and *P*, for cases 42 and 54 in *T* correspond with cases 51 and 63 in *P*, while neither of these cases has its counterpart in *C*.

Shall we say that any part of these three manuscripts was copied from the corresponding part of the others? Hardly. To begin with, *C* was not taken from *T*, and *T* was not simply taken from *C*. *C* has the better name Tyeys where *T* has the wrong name Tyers (in our case 103, which is case 2 in both manuscripts); where *C*, *P*, and *T* form one version we often find that *C* and *P* are more closely related to each other than *C* and *T*; for instance, in case 30 (below p. 116), which is case 40 in *C* and case 39 in *T*, both *C* and *P* have *le Ael nostre jeffour*, where *T* has *etc. de ceux tenements*; again, both *C* and *P* have *Will. Statut voet*, where *T* has *Malm. dit*. In other words, if *C*, or rather that particular case in it, has to be derived from one of the other two, it must have been taken from *P* and not from *T*. Similarly, in our case 46 (below p. 164), which is case 44 in *C* and case 46 in *T*, *P* speaks correctly of Robert Tony and *C* of R. T., whereas *T* speaks of Robert Comyn. *T* speaks of the county of B., where both *C* and *P* mention *Berwyke* or *Berewyke*; in *T* Counsel demands the country 'del West' de Londres,' where *C* instead of 'West' has *visne* and *P* has *visnee*. In our case 53 (below, p. 188), which is case 48 in *C* and case 50 in *T*, *P* has Robert Ker and *C* has Roger Ker, where *T* has simply Robert and the name appears in the record as Robert le Barkere.

In our case 106, which corresponds with case 31 in *C* and case 35 in *T*, we have two versions, one of them in *C* and the other in *T*.

### *T*

A woman (who held) in fee tail after the death of her husband prayed aid of his issue etc.

And she did not have it because she could vouch by herself and could by herself give all (the answers) that lay according to law in the right (of the tenements) etc.

### *C*

#### Aid-prayer

*Scrope.* The tenements were given to us and to our husband and to the heirs of our two bodies begotten, and our husband is dead and we pray aid of John, son and heir of our husband.

*Denom.* You are tenant in fee tail, wherefore you can vouch and give every kind of answer which is given by law, without aid.

And she was ousted of the aid.

It seems clear that the version in *C* contains all the information necessary to state the case in such a way as to give the report which we find in *T*. On the other hand, the report of the dialogue in *C* seems a little too detailed to have been worked out of the information supplied in *T*.

But on the other hand *T* was not simply copied from *C*. This is best shown, if we compare the sequence of the cases in *P* with that in *C*. It is clear that especially the last part of *T* is much nearer to the arrangement in *P* than to that in *C*. *T* has its case 52 and 54 in relatively the same place as *P* has its case 61 and 63, whereas *C* has nothing corresponding with these cases.

And finally, those parts of *P* which correspond with *T* or with *C* and *T* were not copied from any one of them. For sometimes *C* is more closely related to *T* than to *P*. For instance, in our case 79, which is case 1 in both *C* and *T*, their common version corresponds to a certain extent with the version in *P*, but there are so many differences that we had to give the report in *P* as one version, and that in *C* and *T* as another. Similarly, in our case 106, which is case 34 in *C* and 33 in *T*, the text which we have constructed consists of five parts, the first one from *C* and *T*, the second from *P* only, the third from all three, the fourth from *P* and the fifth from *C* and *T*.

Let us now examine manuscripts *P* and *R*.





Case in MS. <i>P</i>	No. in this Edition	<i>B</i>	<i>C</i>	<i>E</i>	<i>F</i>	<i>G</i>	<i>M</i>	<i>R</i>	<i>T</i>	<i>X</i>
50 (see 29)	..	..	..	..	..	..	..	..	..	..
51	63	..	..	29	..	..	..	18	*42	..
52	11	..	..	..	..	..	..	..	..	..
53	107	..	*42	..	..	..	..	..	*44	..
54	92	..	*43	25	3	29	..	..	*45	52
55	46	..	*44	..	..	..	..	..	*46	..
56	7	..	*45	..	..	..	..	..	*43	..
57	18	..	*46	..	..	..	..	..	*48	..
58	29	21	*47	..	..	36, 31	37	..	*49	..
59	53	..	*48	..	12	..	2	..	*50	18
60	75	..	*49	28	11	..	*3	13	*51	19
61	20	..	..	15	..	..	*1	27	*52	20
62	15	..	*50	..	..	..	*4	8	*53	12, 21
63	66	..	..	..	*13	..	*5	..	*54	22

MANUSCRIPT *R*

Camb. Univ. Libr. Dd. 9. 64

Case in MS. <i>R</i>	No. in this Edition	<i>B</i>	<i>C</i>	<i>E</i>	<i>F</i>	<i>G</i>	<i>M</i>	<i>P</i>	<i>T</i>	<i>X</i>
1	83	7	32	2	38	6	23	*5	30	43, 1
2	6	22	5	..	..	..	38	..	4	2
3	4	13	..	5	33	18	29	6, 27, 46	14	3, 49
4	82	..	..	..	15	..	6	..	10	4
5	70	..	..	..	..	14	..	*7	..	5
6	77	..	17	8	14	22	..	*8	15	6
7	67	..	20	..	16	15	7	..	..	7, 25
8	15	..	50	..	..	..	4	62	53	12, 21
8 <sup>a</sup>	64	2	..	24	26	..	18	*16	..	36
9	52	17	..	..	9	..	33	*21	56	..
10	73	3	..	..	27	..	19	*15	..	37
11	86	..	..	..	2	..	..	*17	..	51
12	33	..	36	..	..	..	..	*18	36	..
13	75	..	49	28	11	..	3	60	51	19
14	38	..	29	16	39	13	..	*23	28	39
15	9	..	..	..	..	..	..	*25	..	..
16	102	11	..	..	..	..	27	*26	..	47
17	47	..	24	..	..	..	..	*28	21	..
18	63	..	..	29	..	..	..	51	42	..
19	93	..	..	..	..	..	..	*40	..	..
20	74	14	35	19	1	12	30	*24	34	50
21	48	..	41	..	..	..	..	*29, 50	..	41
22	76	..	19	13	20	..	10	*30	17	29
23	37	..	22	14	..	..	11	*31, 32, 33	..	30
24	50	..	30	9	..	..	..	*34	29	24
25	19	..	..	11	..	..	12	*36	..	..
26	78	..	33	18	..	..	..	*38 <sup>a</sup>	31	..
27	20	..	..	15	..	..	1	61	52	20
28	68	..	13	..	..	8	..	45	11	..
29	30	..	40	30	..	..	..	48	39	..



Out of the 29 cases in *R*, 20 (69 per cent.) give the same versions as *P*. There is no other manuscript with which *R* has common versions. On the other hand, of the 63 cases in *P*, 20 (32 per cent.) are common versions with *R*, 18 (29 per cent.) with *T*, 14 (22 per cent.) with *C*, 4 (6 per cent.) with *M*, and 1 with *F*. *P* has several cases which are unique, some of them being Records ; the other cases are not arranged in exactly the same way as in *R*, though the sequence is rather similar. On the other hand, it will be seen that cases 53 to 60 in *P* are arranged in exactly the same way as cases 42 to 49 in *C*, whereas there is a difference in the arrangement of the corresponding cases in *T*. That the cases in *P* are not copied from *R* can be seen, for example, from the fact that while cases 30, 31-3, 34, 36, 38*a* in *P* correspond with cases 22, 23, 24, 25, 26 in *R* and give the same versions, cases 45 and 48 in *P*, though corresponding with the cases 28 and 29 in *R*, give different versions, resembling those in *C* and *T*, or in *T* alone. In *T* the two cases in question are 11 and 39, and it should be noted that 39 follows after 38, which gives the same version as case 47 in *P* (not represented in *R*) and that there begins a series of cases in *T* similarly arranged, and giving the same versions as those in *P*. In other words, the similarity between the arrangement and the wording in *P* and *R* is due to a *common ancestor*, and not to the fact that the cases in *P* were copied from *R*.

But *R* was not copied from *P*. It is enough to point out that several of its cases are dovetailed with other cases which correspond with reports in *P* arranged in the same order, and yet give different versions. For instance, case 1 in *R* gives the same version as case 5 in *P*, and case 5 in *R* gives the same version as case 7 in *P*. But case 3 in *R*, which corresponds with case 6 in *P*, does not give the same version. In other words, the similarity of versions, just as the similarity of order, is due to the fact that both manuscripts have derived some of their cases from a common source.

Next, we come to manuscript *M*, the table for which includes manuscript *B*, because cases 1 to 22 of *B* correspond with the arrangement of *M* and give the same versions as cases 17 to 38 in *M* (see above, p. xxi).

## MANUSCRIPT M

Camb. Univ. Libr. Ff. 2. 12

Case in MS. <i>M</i>	No. in this Edition	<i>B</i>	<i>C</i>	<i>E</i>	<i>F</i>	<i>G</i>	<i>P</i>	<i>R</i>	<i>T</i>	<i>X</i>
1	20	..	..	15	..	..	*61	27	*52	20
2	53	..	48	..	*12	..	59	..	50	18
3	75	..	*49	28	11	..	*60	13	*51	19
4	15	..	*50	..	..	..	*62	8	*53	12, 21
5	66	..	..	..	*13	..	*63	..	*54	22
6	82	..	..	..	*15	..	..	4	10	4
7	67	..	20	..	*16	15	..	7	..	7, 25
8	25	..	21	..	*17	..	..	..	18	26
9	45	..	..	..	*18	..	..	..	..	27
10	76	..	19	13	*20	..	30	22	17	29
11	37	..	22	14	..	..	31-3	23	..	30
12	19	..	..	11	..	..	36	25	..	..
13	26	..	..	12	*21	..	9	..	..	8
14	72	..	25	..	*22	..	10	..	22	10, 31
15	27	..	..	..	*23	..	..	..	..	32
16	95	..	26	..	*24, 43	19	..	..	24	33
17	61	*1	27	21	*41	..	13	..	23	13, 35
18	64	*2	..	24	*26	..	16	8a	..	36
19	73	*3	..	..	*27	..	15	10	..	37
20	88	*4	..	..	*28	..	..	..	..	38
21	99	*5	..	..	*45	..	..	..	..	40
22	1	*6	..	1	44	5	..	..	..	42
23	83	*7	32	2	38	6	5	1	30	43, 1
24	49	*8	..	7	37	7	..	..	..	44
25	84	*9	10	3	*31	3, 11	..	..	9a	45
26	62	*10	6, 11	4, 6	..	9	44	..	9, 10	46
27	102	*11	..	..	..	..	26	16	..	47
28	23	*12	7	..	*32	..	..	..	7	48
29	4	*13	..	5	*33	*18	6, 27, 46	3	14	3, 49
30	74	*14	*35	19	*1	12	24	20	34	50
31	89	*15	..	..	*4	16, 17	..	..	..	53
32	5	*16	..	..	*8	..	..	..	..	55
33	52	*17	..	..	*9	..	21	9	..	56
34	28	*18	..	27	*10	..	22	..	..	57
35	59	*19	..	..	*29	..	..	..	..	..
36	58	*20	..	..	*34	..	..	..	..	..
37	29	*21	47	..	*36	*31	58	..	49	..
38	6	*22	5	..	..	..	..	2	4	2

Of the 38 cases in this manuscript, 27 (71 per cent.) give versions common with *F*, 22 (58 per cent.) give versions common with *B*, 4 (11 per cent.) give versions common with *P* and *T*, 3 (7 per cent.) give versions common with *C*, and 2 give versions common with *G*. It will be seen that the order of the cases giving common versions



with *B* is absolutely identical, whereas as to the versions common with the other manuscripts their order is more or less approximately similar. That leads us to infer that manuscript *M* was compiled from sheets from which the other related manuscripts were compiled : for it was not compiled from any one of them, nor was it the parent of any one of them. Thus, if we take our case 4 we find that one part of the first version is given in *G* only ; the second part is similar in *G* and in *B*, *F*, and *M*. The last part, again, has to be given separately for *G* (in which it is worse), and for the other three manuscripts, in which it is better. It follows that the three are related more closely to one another than they are to *G*. *B* and *M*, however, are related to one another more closely than they are to *F*. For instance, both have *Scrop* where *G* and *F* have *Herle*, and they have *Ston'* where *G* and *F* have *Scrop* (p. 10 note 9). There are many other points in which *B* and *M* show closer resemblance with one another than with any one of the other two. Now, in other cases in which *B*, *F*, and *M* give one version, we sometimes find that *B* and *F*, or *F* and *M* are related to one another more closely than to the third. Thus in our case 59 (below, p. 199), which is case 35 in *M* and case 19 in *B*, *M* has *en vn bref dael les parties*, whereas both *B* and *F* have *en vn bref les parties* ; *M* has *et feut mye receu* whereas the other two manuscripts have *et ne feut mye receu*. In our case 73 (to be published in vol. xiv.), *M* only says that there was a writ of entry, but *B* and *F* add (correctly) that it was based on novel disseisin. Similarly, in our case 61 (below, p. 206) the defendant (Alan Plukenet) is described in *B* as *Labbe de Plumstoke*, and in *F* and *M* as *Labbe de P*. *F* and *M* have *acorderunt* where *B* has *acordent*. After *Toudeby's* statement in *B* both *F* and *M* supply before the following statement the name of *Herle*, which is omitted in *B*, and after his statement they add *et alii econtra*.

Since, therefore, we find that the relations between any two of these manuscripts are sometimes closer than between any one of them and the rest, the inference seems safe that they are derived from some common source, and not one from another.

Neither are the few cases in *M* which give the same versions as *P* and *T* either derived from, or the originals of, the cases in the latter manuscripts. It is enough to compare our case 15 (below, p. 48) to see that in the variants to Version I, which is taken from *P*, there is any number of combinations, such as *C*, *M*, *T*, or *C*, *T*, or *M*, *T*, or *C*, *M*.

We pass to manuscript *F*.

MANUSCRIPT *F*  
 Brit. Mus. Harl. 572

Case in MS. <i>F</i>	No. in this Edition	<i>B</i>	<i>C</i>	<i>E</i>	<i>G</i>	<i>M</i>	<i>P</i>	<i>R</i>	<i>T</i>	<i>X</i>
1	74	*14	35	19	12	*30	24	20	34	50
2	86	..	..	..	..	..	17	11	..	51
3	92	..	43	25	*29	..	54	..	45	52
4	89	*15	..	..	16, 17	*31	..	..	..	53
5	98	..	37	..	..	..	..	..	37	..
6	14	..	..	..	..	..	..	..	..	..
7	44	..	..	*26	..	..	39	..	..	54
8	5	*16	..	..	..	*32	..	..	..	55
9	52	*17	..	..	..	*33	21	9	..	56
10	23	*18	..	27	..	*34	22	..	..	57
11	75	..	49	28	..	3	60	13	51	19
12	53	..	48	..	..	*2	59	..	50	18
13	66	..	..	..	..	*5	*63	..	*54	22
14	77	..	17	8	22	..	8	6	15	6
15	82	..	..	..	..	*6	..	4	10	4
16	67	..	20	..	15	*7	..	7	..	7, 25
17	25	..	21	..	..	*8	..	..	18	26
18	45	..	..	..	..	*9	..	..	..	27
19	111	..	..	..	..	..	..	..	..	28
20	76	..	19	13	..	*10	30	22	17	29
21	26	..	..	12	..	*13	9	..	..	8
22	72	..	25	..	..	*14	10	..	22	10, 31
23	27	..	..	..	..	*15	..	..	..	32
24, 43	95	..	26	..	19	*16	..	..	24	33
(with 24)										
25	90	..	28	20	..	..	41	..	27	34
26	64	*2	..	24	..	*18	16	8 <sub>a</sub>	..	36
27	73	*3	..	..	..	*19	15	10	..	37
28	88	*4	..	..	..	*20	..	..	..	38
29	59	*19	..	..	..	*35	..	..	..	..
30	71	..	..	..	..	..	..	..	..	41
31	84	*9	10	3	3, 11	*25	..	..	9 <sub>a</sub>	45
32	23	*12	7	..	..	*28	..	..	7	48
33	4	*13	..	5	*18	*29	6, 27, 46	3	14	3, 49
34	58	*20	..	..	..	*36	..	..	..	..
35	13	..	..	..	*30	..	..	..	..	..
36	29	*21	47	..	*31	*37	58	..	49	..
37	49	8	..	7	*7	24	..	..	..	44
38	83	7	32	2	*6	23	5	1	30	43, 1
39	38	..	29	16	*13	..	23	14	28	39
40	57	..	..	..	*1	..	..	..	..	..
41	61	*1	27	21	..	*17	13	..	23	13, 35
42	24	..	..	..	*4	..	..	..	..	..
43	..	..	26	..	..	..	..	..	..	..
(see 24)										
44	1	6	..	1	*5	22	..	..	..	42
45	99	*5	..	..	..	*21	..	..	..	4)



Its first ten cases follow the arrangement and versions of cases 14 to 18 in *B*, which correspond with cases 30 to 34 in *M*. From case 11 to case 33 *F* follows the arrangement of, and has versions identical with those of, cases 2 to 29 in *M* (apart from unimportant interpolations and omissions). Cases 34 and 35 in *F* give the same versions as cases 36 and 37 in *M*. The remaining few cases in *F* do not follow the arrangement of any one known manuscript, but two of them give versions identical with *M* and *B* and three with *G*. Altogether, out of the 45 cases preserved in *F* (we do not know how many were on the missing folio or folios) 27 (60 per cent.) give versions identical with *M*, 16 (34 per cent.) with *B*, 10 (22 per cent.) with *G*, and one each with *E*, *P*, and *T*.

It has been mentioned above that we do not think it likely that either *B*, *F*, or *M* copied cases from one another. It may be useful to repeat here that in our case 4 (below, pp. 8 ff.) *G* has one part which does not occur elsewhere, another part corresponding with *B*, *M*, and *F*, and a third part which is worse than that of the other three manuscripts. Similarly, in our case 92 (which is case 3 in *F* and case 29 in *G*) *F* has the correct names 'R. Oysel' (where *G* has 'W.') and 'Geffrey de Melsamby' (where *G* has simply 'Geffrey'). If, therefore, in our case 4 *G* has different or unique parts which could not have been copied from *F*, and in our case 91 *F* has names which could not have been copied from *G*, it follows that none of the MSS. was derived from the other. *G* avoids in our case 1 (below, p. 1) the mistake of *F*, which says that John of Moubray brought a writ of entry (as a matter of fact it was a writ of right): *G* says simply that he demanded certain tenements.

Similarly, on comparing *F* with *M* and *B*, we find that in our case 5 (below, p. 25) *F* has the worse text: it says, for instance, 'when you come *sur la estente*,' where *B* and *F* have *alacounte* (to the account); on the other hand in our case 28 (below, p. 107) it has a statement attributed to *Denom*, which is missing in the other two manuscripts ('The attorney can receive the fealty etc. and since he has confessed that the fealty is in arrear and he is not ready etc. judgment etc. Note that the prior was (there) by attorney'). There are also several statements in *F*, omitted in *B* and *M*, in our case 74. As between *M* and *F*, *F* has a fuller version of our case 96 (which is case 24 in *F* and case 16 in *M*), while in our case 64 (below, p. 222), which is one of cosinage, but is described in several manuscripts (among them *F*) as one of entry, *M* adds the irrelevant information that it was a writ of entry *ad terminum qui preteriiit*. It does not seem likely that such a detail would have been added (twice) by the writer of the

Year Book on his own initiative, if he were simply copying from *F*. Finally, in our case 82 (which is case 15 in *F* and case 6 in *M*) *F* has the wrong name *Vne Pernele* (one Petronilla), whereas *M* has, more correctly, *Vn Priour* (a prior).

It is difficult to say definitely whether the only version common to *E* and *F* can prove that one manuscript was dependent on the other. As to our case 67 (below, p. 230), of which there is a common version in *F*, *M*, *P*, and *T*, the similarity between *F* and *M* is closer than that between *F* and *P* and *T*.

Finally, we come to manuscript *G*.

MANUSCRIPT *G*  
Cambr. Univ. Libr. Gg. 5. 20

Case in MS. <i>G</i>	No. in this Edition	<i>B</i>	<i>C</i>	<i>E</i>	<i>F</i>	<i>M</i>	<i>P</i>	<i>R</i>	<i>T</i>	<i>X</i>
1	57	..	..	..	*40	..	..	..	..	..
2	79	..	1	..	..	..	43	..	1	..
3, 11	84	9	10	3	31	25	..	..	9a	45
4	24	..	..	..	*42	..	..	..	..	..
5	1	6	..	1	*44	22	..	..	..	42
6	83	7	32	2	*38	23	5	1	30	43, 1
7	49	8	..	7	*37	24	..	..	..	44
8	68	..	13	..	..	..	45	28	11	..
9	62	10	6, 11	4, 6	..	26	*44	..	9	46
10	32	..	16	..	..	..	..	..	13	23
11	..	..	..	..	..	..	..	..	..	..
(see 3)										
12	74	14	35	19	1	..	24	20	34	50
13	38	..	29	16	*39	..	23	14	28	39
13a	31	..	9	..	..	..	..	..	..	..
14	70	..	..	..	..	..	7	5	..	5
15	67	..	20	..	16	7	..	7	..	7, 25
16, 17	89	15	..	..	4	31	..	..	..	53
17	..	..	..	..	..	..	..	..	..	..
(see 16)										
18	4	*13	..	5	*33	*29	6, 27, 46	3	14	3, 49
19	96	..	26	..	24, 43	16	..	..	24	33
20	43	..	..	..	..	..	19	..	..	..
21	16	..	18	..	..	..	..	..	16	..
22	77	..	17	8	14	..	8	6	15	6
23	22	..	..	..	..	..	..	..	..	..
24	54	..	..	..	..	..	..	..	..	..
25	91	..	..	..	..	..	..	..	..	..
26	39	..	..	..	..	..	..	..	..	..
27	65	..	..	..	..	..	..	..	..	..
28	12	..	..	..	..	..	..	..	..	..
29	92	..	43	25	*3	..	54	..	45	52
30	13	..	..	..	*35	..	..	..	..	..
31	29	*21	47	..	*36	*37	58	..	49	..



It will be seen that of the 31 cases in this manuscript ten (32 per cent.) give versions common with *F*, two (7 per cent.) each with *B* and *M*, and one with *P*. This last case (our case 63) is, however, reported in *P* only in part, so that the report in *G* could not have been derived from there. The relation of *G* with the other manuscripts has been discussed above.

In regard to Michaelmas term 6 Edw. II. the conclusions as to the relation of manuscripts to one another may be stated as follows:—The nine principal manuscripts (*B*, *C*, *E*, *F*, *G*, *M*, *P*, *R*, *T*) are not derived, wholly or partly, from one ancestor common to all. We can distinguish in the different manuscripts groups of cases; each group we can trace to some unknown common ancestor. Thus *B* is derived from the same common ancestor as the later part of *M*, and as many cases in *F*; *C* is related most closely to *T*; *R* is related to *P* only; *E* is related to practically none of the existing manuscripts closely enough to give common versions (with the single exception of one case of which it has a version common with *F*). *F* is related to *M* and *B*, and to *G*, while *M* is related to *F* more closely than to any other, but follows exactly the same arrangement as *B*. *P* is related to *R*, *T*, and *C*, while *T* is related to *C* and *P* (and slightly to *M*).

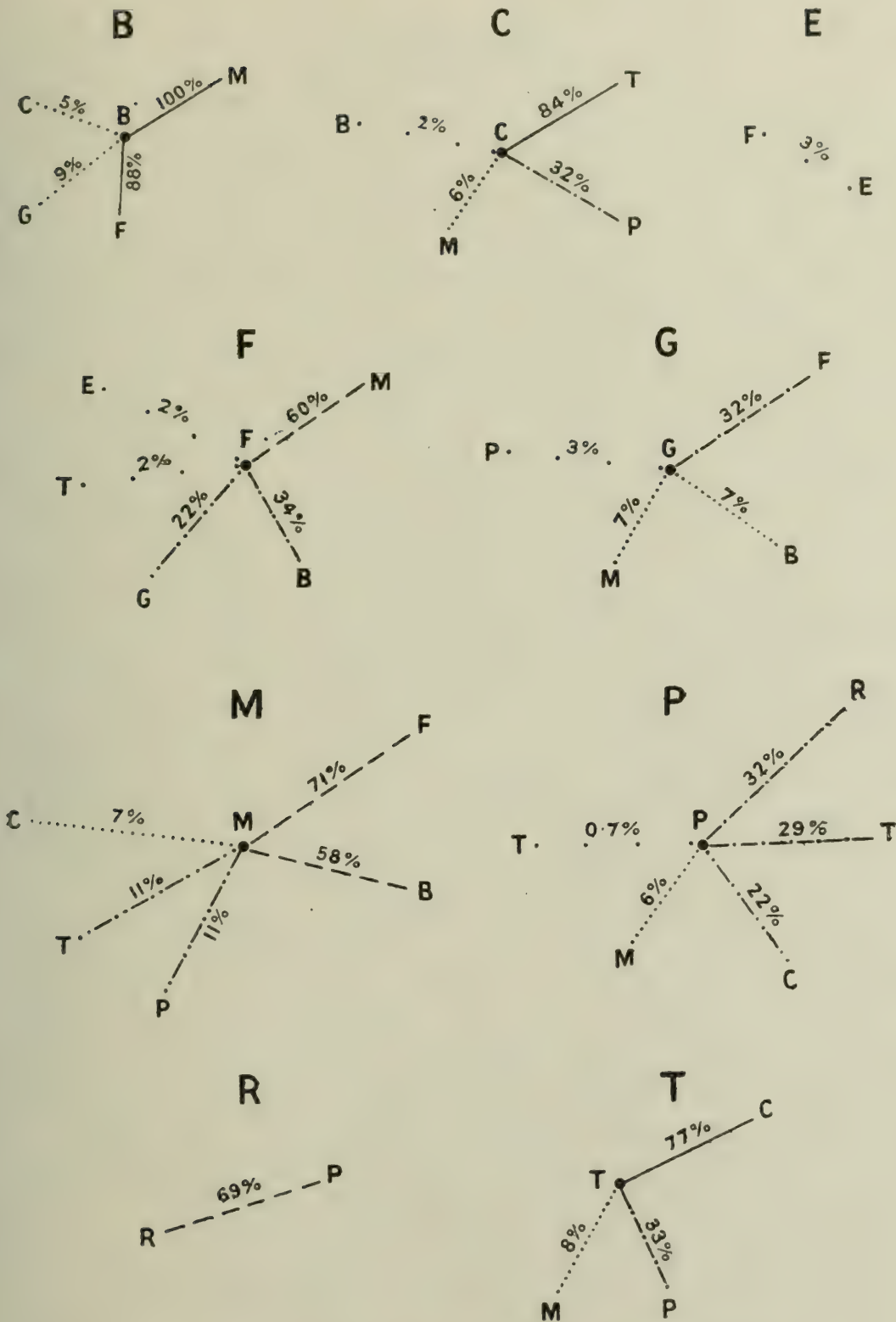
The Diagram opposite may serve to summarise these observations.

Manuscript *X* is, as we know, rather a collection of condensed reports than a transcript of any one existing collection. Consequently, in the subjoined table a star attached to a corresponding version means that that version seems to have been followed in *X*. If *X* has two versions, a remark is added stating with which version in *X* the starred version corresponds.

In considering the relation of *X* with the other manuscripts we do not intend to find out whether any one of them followed *X*, but which one of them has been followed by *X*, directly or indirectly.

*X*, however, has for our term two sets of reports, taken apparently from different sources, but relating sometimes to the same cases. This explains the number of duplicate reports, corresponding with different versions. *X* has a number of cases which are not found in the other manuscripts for the present term, though they may conceivably belong<sup>1</sup> to another term. The table for *X* follows on p. xl.

<sup>1</sup> One case certainly belongs to another term.



—————	means	75-100	per cent.	common	versions.
-----	"	50-75	"	"	"
-----	"	25-50	"	"	"
-----	"	10-25	"	"	"
.....	"	5-10	"	"	"
.....	"	below 5	"	"	"



MANUSCRIPT X  
Bodl. Libr. Tanner 13

Case in MS. X	No. in this Edi- tion	B	C	E	F	G	M	P	R	T
1, 43	83	*7 with 43	32	2	38	6	*23 with 43	*5 with 1	*1 with P	30
2	6	22	5	..	..	..	38	..	*2	4
3, 49	4	*13 with 49	..	5	*33 with 49	*18 with 49	*29 with 49	6, 27, 46	*3	14
4	82	..	..	..	15	..	6	..	with 3	10
5	70	..	..	..	..	14	..	*7	*5	..
6	77	..	17	8	14	22	..	*8	*6 akin	15
7, 25	67	..	20	..	*16 with 25	15	(*) 7 with 25	..	(*) 7 (?) with 7 akin	..
8	26	..	..	12	21	..	13	*9 akin	..	..
9	8	..	..	..	..	..	..	*12	..	..
10, 31	72	..	25	..	*22 with 31	..	*14 with 31	*10 with 10	..	22
11	51	..	..	..	..	..	..	*11	..	..
12, 21	15	..	50 (*) 12	..	..	..	*4 with 21	62 (*) 12	8	53 (*) 12
13, 35	61	*1 with 35	*27 with 13	21	*41 with 35	..	*17 with 35	13	..	*23 with 13
14	85	..	..	..	..	..	..	*14	..	..
15	87	..	..	..	..	..	..	..	..	..
16	..	See Y.B.	5 Edw.	II.	..	..	..	..	..	..
17	40	..	..	..	..	..	..	..	..	..
18	53	..	*48	..	*12	..	*2	*59	..	*50
19	75	..	49	28	11	..	3	60	13	51
20	20	..	..	15	..	..	1	61	27	52
21, 12	15	..	50 (*) 12	..	..	..	*4 with 21	62 (*) 12	8	53 (*) 12
22	66	..	..	..	13	..	5	63	..	54
23	32	..	16	..	..	10	..	..	..	13
24	50	..	30	9	..	..	..	34	24	29
25, 7	64	..	20	..	*16 with 25	15	(*) 7 with 25	..	(*) 7 (?) with 7 akin	..
26	25	..	21	..	*17	..	*8	..	..	18
27	45	..	..	..	18	..	9	..	..	..
28	111	..	..	..	19	..	..	..	..	..
29	76	..	19	13	*20	..	*10	30	22	17
30	37	..	22	14	..	..	*11	31-33	23	..
31, 10	72	..	25	..	*22 with 31	..	*14 with 31	*10 with 10	..	22
32	27	..	..	..	23	..	15	..	..	..
33	95	..	26	..	*24, 43	19	*16	..	..	24
34	90	..	28	20	*25 akin	..	..	41	..	27

Case in MS. X	No. in this Edition	B	C	E	F	G	M	P	R	T
35, 13	61	*1 with 35	*27 with 13	21	*41 with 35	..	*17 with 35	13	..	*23 with 13
36	64	2	..	24	26	..	18	16	8a	..
37	73	*3	..	..	*27	..	*19	15	10	..
38	88	*4	..	..	*28	..	*20	..	..	..
39	38	..	29	16	39	13	..	23	14	23
40	99	*5	..	..	*45	..	*21	..	..	..
41	71	..	..	..	*30	..	..	..	..	..
42	1	*6	..	1	44	5	*22	..	..	..
43, 1	83	*7	32	2	38	6	*23	*5	*1	30
							with 43	with 1	with 1	
44	49	3	..	7	*37	*7	24	..	..	..
45	84	*9	10	3	*31	3, 11	*25	..	..	9a
46	62	10	6, 11	4, 6	..	9	26	44	..	9, 10
47	102	11	..	..	..	..	27	26	16	..
48	23	*12 akin	7	..	*32 akin	..	*28 akin	..	..	7
49, 3	4	*13 with 49	..	5	*33 with 49	*18 with 49	*29 with 49	6, 27, 46	*3 with 3	14
50	74	*14	35	19	*1	12	*30	24	20	34
51	86	..	..	..	*2	..	..	17	11	..
52	92	..	43	25	*3 less than G	*29	..	54	..	45
53	89	15	..	..	4	16, 17	31	..	..	..
54	44	..	..	*26	*7	..	..	39	..	..
55	5	16	..	..	8	..	32	..	..	..
56	52	*17	..	..	*9	..	*33	21	9	..
57	28	(*) 18 akin	..	27	(*) 10 akin	..	(*) 34 akin	22	..	..
58	belongs to another term.									
59	34	..	..	..	..	..	..	..	..	..
60	35	..	..	..	..	..	..	..	..	..

The first seven cases in *X* correspond with the first seven cases in *R*. Cases 8 to 14 in *X* more or less correspond with cases 9 to 14 in *P*. Cases 15 to 17 are unique. Cases 18 to 22 correspond with cases 50 to 54 in *T* and cases 59 to 63 in *P*, and then comes a long series of cases corresponding with cases 7 to 34 in *M*. Finally, there are three unique cases. In other words, *X* is compiled mainly from *R* or from its ancestor, from *P* or its ancestor and *M* or its ancestor, or, more broadly, it is connected partly with the *PR* group, partly with the *BFM* group.

As to *Z*, it is not only a kind of early abridgment, arranged alphabetically, but its materials are usually cast in the form of legal statements, so that it is impossible to trace its source. The following table may be of some slight help.



## MANUSCRIPT Z

Lincoln's Inn, Hale MS. 137 (2)

No. in this Edition	<i>B</i>	<i>C</i>	<i>E</i>	<i>F</i>	<i>G</i>	<i>M</i>	<i>P</i>	<i>R</i>	<i>T</i>	<i>X</i>
18	..	46	..	..	..	..	57	..	48	..
25	..	21	..	17	..	8	..	..	18	26
42	..	..	..	..	..	..	3	..	..	..
62	10	6, 11	4, 6	..	9	26	44	..	9, 10	46
68	..	*13	..	..	8	..	*45	28	*11	..
74	14	35	19	1	12	30	24	20	34	50
75	..	(*) 49	28	11	..	(*) 3	(*) 60	13	(*) 51	19
77	..	17	8	14	22	..	8	6	15	6
80	..	..	..	..	..	..	38	..	(*) 32	..
91	..	..	..	..	25	..	..	..	..	..

It would seem that, so far as any affinity can be traced, it exists, in two cases, with the *PCT* group.

What manuscripts did Fitzherbert use for our term? <sup>1</sup> Brief 805 (our case 84) is based on the *MBF* version, Garde 120 (our case 49) on the *MB* version. Cessauit 49 (our case 95), Cosinage 10 (our case 62), Resceit 166 (our case 97), Resceit 167 (our case 83) are based on the *CT* version, probably on *T*, Dower 144 (our case 7) on the *PCT* version, Darren presentement (our case 15) on the *PCMT* version, Dower 145 (our case 6) on the *R* version, Entre congeable 55 (our case 77) on the *PR* version. In other words, he used at least (1) *M* or *B*, (2) *R*, and (3) *C* or *T*, (4) also, perhaps, *P*.

## 2. REMARKS ON SOME CASES.

In *Tiltone v. Davy* (case 4) a preliminary struggle between the parties is centred round a question of procedure which is often raised by pleaders, namely the question of the relation between an averment and a fine. Margery the widow of John of Tiltone demanded a portion of the tenements held by Alice the widow of W. Davy as dower constituted to her by her late husband and subsequently alienated by him to the husband of the tenant. Counsel offered to aver that the demandant's husband had never been seised, but a fine levied between the latter and the tenant was produced to prove that the right and the seisin of the demandant's husband had been recognised, and that the conusee had

<sup>1</sup> Y.B., S.-S. vol. vi, Introd. p. xxxv.

received only a life-tenancy in the tenements. The Court held the fine to be conclusive as to the seisin of the demandant's husband, and the issue was narrowed to the question whether Margery was wedded to her late husband when the fine was levied. This was decided in favour of the demandant. Thereupon the tenant shifted his ground and vouched the demandant as guardian in socage of infant sons. The voucher stood, and Margery was required to take her dower out of the portion allotted to her for nurture as a guardian in socage. The decision as given in the Plea Roll mentions expressly that Margery has to hold herself primarily to the tenements assigned in nurture, and if these do not prove sufficient, to have recourse to Alice's tenements, while Alice had to claim compensation from the land of the heir. The same procedure is described in the reports of case 8 (*Brynkele v. Le Vaunere and Whitefelde*). Fitzherbert has a statement in the *Natura Brevium* (p. 334, ed. of 1687) which reads like a reference to the decisions in our cases. Cf. Britton, ed. Nichols, ii, 84.

Case 7 (*Le Veel v. Berkeley*) shows one of the methods by which wardship of the body could be enforced by self-help. Thomas of Berkeley claimed wardship and marriage of the heir of one of his tenants, but another claimant, the Earl of Gloucester, had seized the person of the minor. The lord of Berkeley held the mother to be responsible for that abduction and refused to assign her the dower to which she was legally entitled. She merely pleaded that she did not hand over the boy to the Earl of Gloucester. There is no attempt at treating the two claims as entirely distinct. Such a treatment of the matter is in keeping with Herle's remark (quoted by Holdsworth, iii, 5).

Case 11, *Fitzjohn v. Esteney and Louel*, contains a picturesque record of conflicts and disseisins in the reigns of Henry III and Edward I. It is noteworthy from the point of view of a history of Hampshire. Apart from that it supplies incidentally a curious point for the examination of the legal historian. The record of an assize which came before Gilbert of Roubery and his fellow-justices in 1294 mentions the fact that after the death of one Reginald, who received the manor of Esteney from Florence of Dageney in compensation for another manor lost in litigation, Reginald's son Philip recovered the manor against Nicholas Martyn, the guardian of Matthew Fitzjohn, and held it through life. After his death Philip his son and the executors of the deceased Philip, the father, acting in the name of the son, entered the manor and remained there for a night. When they went away and sent Philip the younger to Portsmouth, Nicholas Martyn ejected Philip's representative and seized the estate. It is rather startling to find the executors of the deceased asserting rights



as to land in the name of an heir under age and taking him about with them, while no mention is made of the guardian in chivalry (the King ?). The interference of the executors may be explained on the supposition that they were acting as temporary representatives of the general interests of the heir, besides being directly concerned in the administration of chattels. Unfortunately we are left in ignorance as to the personal standing of the executors.

Case 12 (*Anon.*) turns on the interpretation of a famous clause of the Statute of Westminster II. This clause, intended to secure the fulfilment of the condition imposed by the donor of an estate in fee tail, provided that on the death of the tenant the estate should pass at once (*statim*) to his heir or to the reversioner, without possibility of alienation. Besides it expressly forbade the second husband of an heiress in fee tail to claim the usual courtesy by the law of England. This being so, it was argued on behalf of the guardian of the infant heir in our case that the second wife of the deceased tenant was not entitled to dower. The argument was in the nature of a pleading for a declaration of the law in the above sense, because the Earl of Gloucester as guardian stated from the beginning that he was prepared to assign dower, if the Court should consider it right. Friskenev for the demandant explained the silence of the statute as to the second wife as an admission that the old Common Law rule remained in force in such a case and that the husband's tenancy was considered to be equivalent to fee simple: this would ensure dower to the second wife. Herle, on the other hand, laid stress on the *statim* of the statute and pleaded for an immediate entry of the heir or of the reversioner. The judges, Bereford and Inge, were inclined to accept this reading, and Bereford told a story about an analogous case in which a decision of Lovetot had been reversed by R. of Hengham. In the case cited by him the heir brought a mort d'ancestor instead of a writ of formedon in the descender, the assize gave a verdict that the tenement had been granted to a man and his wife, and Lovetot decided for the demandant. This judgment was reversed in the King's Bench by Ralph of Hengham. The implication was clearly that it was a case not of fee simple, of which a person can dispose at his will, but a conditional gift in fee tail which secured the immediate entry of the heir or of the reversioner. The discussion throws light on the uncertainty of law in the early years after the passing of the Statute of Westminster.

In a case of Mich. 33 Edw. III (Fitzherbert, *Taile*, 5) counsel for the demandant urged the same view as that expressed in our case by Friskenev, namely that at Common Law before the passing of the

statute the issue in a fee tail was joined (*acouple*) to the donee ; so that in this respect it was as good as a fee simple, and that this was not altered by the statute. This argument was, however, met by the observation on the part of the judge that in many cases the Court has to apply statutes in a wider sense than the express words would authorise. This view as to the *equity* of the Statute of Westminster, in the sense of an extension by the Bench of the rule as to courtesy of England to the case of a second wife, was again put forward in a case of Henry IV's time, as to the dower of the widow of Sir John Markham,<sup>1</sup> C.J. (12 Henry IV, 2). In later law a distinction was made between fee tail in which a feoffment was made to a man and the heirs of his body, and feoffments to a man, his wife, and their issue. In the first case there may be no material difference from fee simple and the second wife received her dower, while in the second she was held to be excluded by the issue of the first wife. Cf. *Co. Rep.* viii. p. 35 ; Plowden, *Comm.* p. 247 ; *Co. upon Littleton*, 241, a note iv.

Case 13 (*Asmore v. The Prior of Bridlington*) starts from a condition attached to a rent-charge granted by the Priory of Bridlington, namely that during the nonage of the heir the service of the rent should be extinct. In the case under consideration dower was awarded by the Court, but as the heir was an infant the widow was obliged to wait until his coming of age. There is no evidence of her receiving any compensation, and she might conceivably die without ever coming to her dower. This peculiar reservation was perhaps devised as a parallel to the advantage accruing to a lord or to a patron through an interruption in the tenure of a fee or of an advowson.

Case 14 (*Peres v. Thusaut*) is interesting on account of the complicated interlacing of claims. The widow of the father (A) brings her writ of dower against the widow of the elder son (B), who predeceased his father. The tenant vouches to warranty the younger son C, who has succeeded A, but refuses to warrant on the ground that the inheritance would have to support two full dowers and consequently shrink to one third. This argument does not appeal to the Court, however, and the widow of the father is awarded her dower in full. It seems

<sup>1</sup> *Y.B.B.* 12 H. IV pl. 2.

Millicent qi fust la feme John Markham nadgare Justice, porta bref de Dower vers John fitz et heir mesme cesty John.

*Skrene.* John enter—come fitz et heir du corps de John et Elizabeth sa primer feme engendres.—*Horton.*—Si la terre soit done al baron et sa feme, et a les heirs le baron par luy engendres de corps sa feme, s'ils ont issue, et la feme devie, le baron prend autre feme et devie, la second feme ne sera mye endowe, par l'equity del Statute Westm. 2, cap. 1.—*Trem*—en cesti case la femme nest my ousti par parole del statute, et son baron avera estate de fee par qe il semble qe la femme de teil estate est dowable, come el fust al comen ley, par qe *Curia* ceo fust bien dist.



that a necessary link in the reasoning of the tenants who vouched to warranty is supplied by the fact that they were previously enfeoffed by the father and in actual possession, so that their position as to the heir was that of a strange purchaser, entitled to warranty.

Case 15 (*Heslartone v. Salvayn*) should be noted on account of the conflicting interpretation as to the wording and as to the application of Stat. Westm. II, cl. 5, bearing on advowsons. The object of the clause was to ensure to heirs and reversioners of advowsons the use of the possessory assize of Darrein presentment in spite of a possible interruption of this right through the effect of Dower or Courtesy. Instead of having recourse to the writ of right, as was the case before the statute, they were allowed by clause 5 to sue by a writ of darrein presentment, and referring to the last presentation of their ancestor in the fee simple or the reversioner in fee tail. On the strength of this construction the plaintiff brought this writ, while the deforcor contended that the statute applied not only to the ancestors, but to all to whom the advowson belonged, including purchasers of the right: this would have covered the case of the deforcor. Counsel for the plaintiff, Herle and Malberthorpe, contended first that the object of the statute was to provide a convenient possessory remedy for claimants who might otherwise have been driven to use the writ of right, to which strange purchasers could not resort in any case; secondly, that the last presentations by the ancestor had been effected before the passing of the statute, so that if the dispute had arisen at once the deforciant would have been unable to plead in the manner they had done. The rejoinder to the latter argument was that the statute ought to have a retrospective application.

There is an indication that at least one of the judges (Scrope) did not share such a view of the wide application of clause 5, though it was supported by analogies from the practice in other actions, *e.g.* in the assize of mort d'ancestor, as well as by the example of Stat. Marlbr. cl. 9. Unfortunately no judgment was given by the Court on this point, the issue was narrowed to a point of fact, and eventually the deforciant, who happened to be sheriff of the county where the church was situated, recognised the right of the plaintiff.

*The King v. The Abbot of St. James* (case 20) is a very interesting case bearing on the history of the law of presentations to benefices. The special point in dispute concerned the so-called right of appropriation, that is, the right of ecclesiastical bodies to take over churches or chapels to be served by their own members. This was treated by ecclesiastical lawyers as 'incorporation,' a joining up of the parsonage with the religious house on which it depended. Such incorporation

might be taken in the narrow sense as concerning merely the rights and duties of the parson in the performance of divine service and the care of souls. Continental sources refer to this side of the matter as *altare* in opposition to *ecclesia*, which would indicate the glebe and other property rights attached to the parsonage. In pleading for the Abbey of St. James, Herle laid stress on the point that the appropriation in question merely referred to the spiritualities of the church of Sprotton, and did not touch the temporalities connected with it. Denham's arguments in the case (see p. 75) disclose, however, yet another aspect of the dispute. What had become of the advowson with its considerable profits? The King's proctor claimed that the church was a Royal foundation, and that in the case of a vacancy in the Abbey the valuable right of advowson would revert to the founder. Denom offered to prove that the advowson was the gift of a lady, who held from the honour of Leicester. A second point he tries to make is the contention that the Abbots began to present to the incorporated living in the reign of King Henry III, so that there could be no question of applying the statute *de religiosis* to the case. The dispute, a very protracted one, did not lead to a decision on the question of law, because the King yielded on the question of fact, and the church remained in the possession of the Abbey. The general question was treated later on in the sense that a licence from the King was considered necessary for a valid appropriation. Cf. William Lyndwode, *Provinciale*, lib. iii. f. cxvi 5 (ed. of 1525).

*Latimer v. Stapleton* (case 22) discloses an attempt on the part of justices to avoid a miscarriage of justice by staying execution of a judgment obtained on formal grounds. The defendant in our case, Miles of Stapeltone, who had purchased an estate from the heir of one of three sisters, claimed an advowson to which he had no title, as he could not derive his right from the eldest sister. His claim had been defeated in a previous trial by the guardian of the issue of the eldest sister, but he had won his case against the representative of the second sister through the default of the latter. The justices in the second trial, though they had no option but to give judgment in favour of Miles on account of the non-appearance of his opponent, were however cognizant of the weakness of Miles' claim and stayed execution of their judgment. The assumption of such a discretionary right on the part of the justices is highly significant as an illustration of the attempts of Common Law judges to allow as far as possible equitable considerations, before the jurisdiction of the Chancery began to develop into a rival system (cf. Hazeltine on 'Early Equity' in the *Essays on Legal History*; *Proceedings* of the Legal Section of the International Congress of



Historical Studies in London 1913). In the thirteenth and early fourteenth centuries the Courts of Common Pleas and of King's Bench undoubtedly took a much less formal view of the duties of a court of record and exerted a very wide discretion in their treatment of legal remedies (*cf.* S.S. Y.B.S. ii. 59). On the other hand, our case shows also the necessary limitations of such action. As long as proceedings in error have not been instituted, the judges in the trial of Mich. 6 Edw. II were confronted with a possessory action. Bereford and his colleagues had to abide by the judgment against Latimer in the previous case and to abate the writ. The trial resulted, however, in an agreement, and it may be suspected that Stapeltone found it inconvenient to insist on a claim which had been recognised to prevail on merely technical grounds.

Of the numerous cases of replevin two or three raise points of general interest. In *Dalazon v. Sauntone* (case 26) the question as to the foundations for claiming the franchise of a free boar in a vill which was divided between two manors was discussed. The plaintiff claimed the franchise in the entire township by prescription, but it was objected on behalf of the defendant that the franchise goes with the lordship and ought therefore in the case under discussion to be restricted to the one manor, *i.e.* half of the vill. Prescription could serve to establish the title of a lord to a franchise within his lordship. Apart from that the claim might be supported by reciprocity, which was not pleaded in this case. This seems undoubtedly the right doctrine from the feudal point of view, whatever complications may have followed in practice from the scission of the economic unity of the township. A point worth noticing is the disagreement between Versions I and II on the one hand and Version III on the other as to Bereford's ruling. The first two versions are undoubtedly correct, while Version III, which seems to concede the point of prescription in accordance with the plaintiff's argument, represents a defective report by a careless listener.

Case 29 (*Clement v. The Abbot of Lilleshall and Shertone*) turns on the question whether common can be appendant to a burgage tenement. Counsel for the defendant maintained that it cannot, because common appendant should allow for admeasurement. According to this view only standardised tenements, such as virgates or bovates, could claim a proportional right as appendant to them, while burgage tenure was not a standard share. This view was, however, not accepted by the Court: its acceptance would have produced curious results in most old towns which became only gradually differentiated from rural communities. See Ballard, *The English Boroughs in the XIIth*

*Century* (Cambridge, 1914); Maitland, *Township and Borough* (Cambridge, 1898).

*Peyntoun v. Musket* (case 41) turns on the doubtful situation created by the law of coverture. The latter imposed a conditional disability on the wife during marriage. While both spouses were alive the wife had no will of her own in regard to property but had to abide by the decisions and directions of her husband. This merger of the wife's personality into that of the husband was not a complete one, and after the death of the husband the wife's separate right re-appeared and could be asserted by her with full effect, in accordance with the 'cui in vita' principle. In contract, however, coverture was supposed to deprive the wife of juridical capacity and therefore of liability. Practical considerations made it nevertheless impossible to manage households without some buying, selling, borrowing and ordering on the part of a wife keeping house. Hence the doctrine of coverture had to be modified and adapted to business requirements, although right through the Middle Ages the Courts did not succeed in formulating it clearly and the lawyers of the day were constantly urging the same arguments in dispute. Our case, which seems misplaced from an earlier term, corresponds to a report of the *Eyre of Kent* (S.S. xxvii, 46) and Fitzherbert's *Dette*, 163 (although the latter gives Mich. 34 Edw. I as the date). The defendant's wife had purchased two quarters of wheat, but failed to pay the 7s. 6d. agreed upon. Apart from the procedural points raised, the main contention of the plaintiff is that the wife's act had resulted in a profit for the husband, although it is not stated specifically that she acted as his agent. The defendant denied liability for the act of his wife, who was incapacitated from contracting debts. From the point of view of the plaintiff this incapacity ought to lead to a transfer of liability as in the case of a removable prior of a religious house whose act would bind his successor if the community had profited by it. It is important to notice that the report supplements the case by the remark that if the plaintiff had formulated his count as an assertion that the defendant had received so much to his profit through his wife Alice, he would have recovered the debt.

Case 58 (*Atte Gracechurch v. Selmerie*) and case 59 (*Anon.*) are interesting for the history of trial by jury: they show that by 1312-13 evidence of witnesses and of documents used to be produced by the parties before the assize and that counsel addressed the latter in interpretation of such evidence. This is a transition in the direction of trial by jury as understood nowadays, and a distinct advance on the original conception according to which the assize had nothing to do with the



examination of evidence and was summoned to answer questions set to it by the Court on the strength of knowledge acquired independently in the 'country.' Cf. Thayer, *Development of Trial by Jury* (1896), p. 105 ff. As to the older view Brunner, *Entstehung der Schwurgerichte*, 436.

*Fitzsamuel v. Braythe* (case 60) sheds light on the treatment of custom by thirteenth-century judges. Counsel for plaintiffs rested their claim on the following contention. 'The usage of the vill of Mareham is such that if a woman has an inheritance and takes two husbands, if she has issue, males, by the first husband, they will divide the inheritance between them so that the issue of the second husband will not partake thereof' (Toudeby, in Version I, p. 200). The defendants denied the custom, while the plaintiffs offered to prove it by averment. Bereford C.J. held, however, that such a custom could not be alleged in regard to a particular vill which in one of the versions is designated as *de ospelend* (?). He was evidently not in favour of allowing local customs to spread without restriction and laid stress on the necessity that they should be derived from popular usage in large divisions of the country—shires, boroughs. The growth of innumerable customs, as collected e.g. in Blount Hazlitt's *Tenures* or in Sumner's *Gavelkind*, shows that the view expressed by Bereford in our case cannot be considered as more than a manifestation of the natural distrust of a Judge of the High Court as to these juridical formations. It is significant to note that the custom was alleged not as an abstract rule recognised in Mareham, but as a usage the application of which could be exemplified by certain known cases. As Toudeby puts it (in the second version): 'Perhaps the case has never happened in this line of blood before now, but we tell you that all the tenements of this tenure and of the same vill whenever such a case happened have used that custom ("usage") and we have specified certain persons between whom the rule has been applied.'

Case 62 (*Tremur and others v. Giffard*) gives the view of a leading judge of the time on the value of a liberal combination of forms of action. The difficulty arose from the fact that the demandant in a writ of cosinage had traced his right from a great-great-grandfather (*trisaël*), while there was no specific writ going up higher than the degree of great-grandfather (*bisaël*). We need not pay attention to the technical methods by which this difficulty was met—the using of the writ of cosinage instead of that of *bisaël* and the rule as to the quality of all the claimants—but one of Bereford's reasons for allowing the writ to stand is worth considering. According to the third version, he appealed to an analogous deficiency at an earlier period which was

remedied by a skilful use of judicial actions: 'At one time one would not have had a writ of besael, but only a writ of right on his seisin, and yet one could then have a possessory writ on the seisin of the brother of the great-grandfather, namely a writ of cosinage, and the reason was that at that time the writ of besael had not been created' (p. 214).

Cases 64 (*Hertford v. Percy*) and 65 (*Goldington v. Hardy*) illustrate the development of the writ '*Quare ejecit infra terminum*.' In both cases the defendants attempt to abate the writ on the ground that the action had been misapplied. In the second case the defendant's view was stated by Migeley in the following words: 'If the termor be ejected by his lessor, a writ of covenant lies against them; if (he be ejected) by a stranger (acting) on his own authority the lessor will recover the free tenement by assize and then the termor will recover his term against the lessor by writ of covenant' (Migeley, p. 227). Of course such a procedure would have rendered the position of the termor more precarious and greatly complicated the means at his disposal against disseisors. The Court decided against the defendant in the spirit of a statement made by Herle in an earlier case, 3 Edw. II (S.S.). Cf. Holdsworth, *History of English Law*, iii, 181.

Case 64 comes exactly within the purview of the remedy against ejectment by a stranger to whom the lessor has sold the tenement (*par encheson de quel vente*). The defendant wanted to get off on the plea that the term had expired in the meantime: he would have liked to restrict the plaintiff to the use of an action in covenant against the lessor. This was not allowed by the Court because the writ of ejectment had been brought in good time. The pleadings show that the choice lay between the two forms of action, but that the writ of ejectment was preferable for two reasons—because it was directed against the actual disturbance of possession and because it sounded in trespass—that is, laid stress on tort instead of contract.

The last trial to which I should like to call attention is case 68 (*Erdington v. Burnel*). It is curious, because it shows the practical difficulties which attended the earlier stages in the history of the gage of land, as a security for the payment of a debt. In the case under discussion no other means could be found in order to obtain the money required than to convey a manor to the lender in the shape of a feoffment in fee simple, the conveyance being deposited in the safe keeping of a Friar (in impartial hand); besides, a lease to the creditor was made. The debtor tendered payment in good time, and his executors did the same after his death, but the creditor refused to accept the money and put forward the feoffment in fee simple in bar of the claim for restitution of the manor brought by the heir of the



debtor by a writ of entry after completed term. There was a writing (*escript*) or indenture in which the conditions of the loan had been stated. The defendants eventually took up the position that there was no connection between the feoffment produced and the indenture, as further loans had been made to the father of the plaintiff and these had not been repaid. The Court held to the view that the conditions specified in the indenture would justify the resumption of the manor by the plaintiff, provided it could be proved that the charter of feoffment was the same as that delivered to Friar Hugh, and conditioned by the indenture. The correspondence between the two instruments was made a matter of averment. This fact is in itself sufficient to establish the clumsiness of the machinery employed in those days for the recovery of mortgage debts.

The case may well serve to supplement Dr. Hazeltine's statement of the law as practised in the fourteenth century, *The Gage of Land in Medieval England* (Cambridge, 1904).

It is hardly necessary to add that the rôle of the Friars as trusty and impartial depositories of important documents is highly characteristic both of the moral authority enjoyed by them and of the natural inclination of the people to look to ecclesiastical institutions in situations in which ordinary law was recognised to be deficient or unsatisfactory.

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Our thanks are due to Miss M. Hollings for the valuable assistance rendered in compiling the notes to this volume and seeing the text through the Press.

P. V.  
L. E.

# LEGAL CALENDAR

## FOR THE

### SIXTH YEAR OF KING EDWARD II

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The sixth year of the reign began on July 8, 1312. The Sunday letter for the second part of the year (Leap year) was A. In 1312 Easter Day fell on March 26.

#### JUSTICES OF THE KING'S BENCH.

Roger le Brabazon C.J. ; Gilbert of Roubery ; Harry Spigurnel.

#### JUSTICES OF THE COMMON BENCH.

William of Bereford C.J. ; Lambert of Trikingham ; Hervey of Stanton ; John of Benstede ; Harry le Scrope.

#### NAMES OF COUNSEL WHO ARE MENTIONED IN THIS VOLUME.<sup>1</sup>

Asshele, Robert of	Passelewe, Passele, Passelee, Passe-
Cantebrigge (Cauntebrigge), John	leye, Edmund of
of	Russel, Robert
Denum, John (of)	Rustone (Rostone), Robert of
Friskeneý (William of)	Scrope (Scrop), Geoffrey le ( <i>or</i>
Hedon(e), Robert of	de)
Hengham, Ingham, Inge (John of)	Stonore (Stannore, Stonoure,
Herle (Herre <sup>2</sup> ), William	Stonnoure, Staunore, Stonhore)
Hert(ipole) (Geoffrey of)	John of
Huntingdon (Ralph of)	Sutton (Ellis of)
Inge, Ingham, <i>see</i> Hengham	Tiltoun (John of)
Kyngeshemede (Kyngeshemed),	Toudeby (Gilbert of)
Simon of	Wallingford (Walyngford), Peter
Laufare (Lauffare, Laufar, Lauuar,	of
Lauvar), Nicolas (of)	Wescote, John of
Loueday, John (of)	Wylugby (Wyluby, Willeby,
Malberthorpe (Robert of)	Wylleby, Wylgheby, Wyleby,
Muggele (Miggele, Migele), William	Wylughby, Wyliby), Richard
of	of

<sup>1</sup> The prefix *de* or *le* in brackets means that the name appears on the Plea Rolls sometimes with it, and sometimes without it. Where the name appears on the Plea Rolls, all ways of spelling found there are reproduced. Where the name does not appear on the Plea Rolls, the Christian name and prefix are taken from former volumes of this edition, and are given in brackets.

<sup>2</sup> Membr. 297 recto.



Of these the following are mentioned in the Reports, but not on the Plea Rolls of Michaelmas Term :

Friskeney	Malberthorpe
Hengham, Ingham, Inge	Sutton
Hert(ipole)	Tiltoun
Huntingdon	Toudeby

The following *narratores* are mentioned on the Plea Rolls of Michaelmas Term, but not in the Reports :

Bacun, Thomas	Esthalle, William of
Clauer, John (of)	Newtone (Neutone), Thomas of

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The names of the clerks who wrote the records of cases in the Plea Rolls, as far as they can be ascertained, have been added in the Notes from the records, as it is very likely that these clerks took an active part in the reporting for the Year Books.

THE YEAR BOOKS OF EDWARD II.

VOL. XIII.

SIXTH YEAR



PLACITA DE TERMINO SANCTI MICHAELIS ANNO  
 REGNI REGIS EDWARDI FILII REGIS  
 EDWARDI SEXTO.

1. MOUBRAY *v.* BENET.<sup>1</sup>

I.<sup>2</sup>

Pryer <sup>3</sup>destre receu ou celi qe fut receu etc. fut receu a pleder en abatement du bref.<sup>3</sup>

Ion de Moubray<sup>4</sup> demanda certeynz tenemenz devers <sup>5</sup>Ion Benet et Ioane sa femme et<sup>5</sup> tant suy qe les tenaunz feseynt defaute apres defaute. le iour de la s(econd)e defaute. Ion de Moubray demandant ne vynt poynt. mes vn Willem vynt en<sup>6</sup> coste (*sic*) et rehersa le proces et dyt qe Ion Benet et Ioane sa femme ne vnt ren en les tenemenz. si noun a terme de vye<sup>7</sup> et mist auaunt vn escrit de soun lees endente qe ceo testmoigna et dit qe si Ion fut en court il seroit prest a defendre soun droit et pria qe Ion fut demande.

Et fut demande et ne vynt pas par qei

<sup>1</sup> Reported by *B, E, F, G, M, X*. This is Vulg. 5.      <sup>2</sup> From *G*. Compared with *F*.      <sup>3-3</sup> The headnote in *F* runs:—Entre ou le tenant fit defaute apres defaute. al iour de la seconde defaute le demaundant ne vient pas. Mes vn autre vient et dit qe le tenant nauoit qe a terme de vie de sun les: et pria qe le demaundaunt fut demaunde, et il ne vient pas par qei il demaunda iugement de sa nonsiwte.      <sup>4</sup> *Add*: porta bref dentre vers Iohn Beneit et Iohane sa femme et *F*.      <sup>5-5</sup> *Om. F*.      <sup>6</sup> a *F*.      <sup>7</sup> lour deuz vies *F*.

PLEAS OF MICHAELMAS TERM IN THE SIXTH  
YEAR OF KING EDWARD THE SON OF  
KING EDWARD.

1. MOUBRAY *v.* BENET.

I.

Prayer to be received where he that was received was received to plead in abatement of the writ.

John of Moubray<sup>1</sup> demanded certain tenements against John Benet and Margaret his wife and sued while the tenants made default after default. On the day of the second default John of Moubray, the demandant, did not come, but one John of Aungeruille<sup>2</sup> came into Court, rehearsed the process and said that John Benet and Margaret his wife have nothing in the tenements except for term of life. And he put forward an indenture of his lease which witnessed this, and he said that if John<sup>3</sup> were in Court he<sup>4</sup> would be ready to defend his right. And he prayed that John be called.<sup>5</sup>

And he was called and did not come, wherefore

<sup>1</sup> A commissioner of oyer and terminer, 1313-18 (*Cal. Pat.* 1313-17, *passim*; 1317-21, *passim*), and successively Warden of York, Galtres (*ib.* 1307-13, pp. 477, 508) and Axholme (*ib.* 1317-21, p. 46), and Constable of Scarborough (*ib.* p. 29). He was in the King's service on the Scottish border in May 1319 (*Cal. Close* 1318-23, p. 136), but a quarrel arose over Gower (*ib.* pp. 268, 494; *Chron. Edw. I and II* (Rolls Ser.), pp. 254-5; *Stat. of the Realm*, i, 181; Tout, *Edw. II*, p. 141), the inheritance of Aline de Braose, whom he had married in 1316 (*Cal. Pat.* 1313-17, p. 562), and he joined the contrariants (*ib.* 1321-4, p. 47; *Cal. Close* 1318-23, pp. 435, 526; 1321-4, pp. 81, 129). He was present at Borough Bridge (*ib.* 1318-23, p. 522; *Cal. Chart.* iii, 448), and according to Prof. Tout

(*Edw. II*, p. 154) was killed in action, but there is evidence that he was taken prisoner and hanged at York (*Chron. Edw. I and II*, ii, pp. 74, 78, 254-5; *Chron. Mon. de Melsa*, ii, 342; Walsingham, i, p. 165; Murimuth, p. 36).

<sup>2</sup> Appointed to hear and determine cases arising out of Magna Carta etc. in Leicestershire, May 10, 1300 (*Cal. Pat.* 1292-1301, p. 515), and commissioner for array in Leicestershire, August 1324 (*ib.* 1324-7, p. 9). The MS. has 'William,' perhaps in order to avoid confusion.

<sup>3</sup> The plaintiff.

<sup>4</sup> The intervener.

<sup>5</sup> This word is used by Blackstone, 3 *Comm.* 376. But Coke says that the plaintiff is 'demandable,' *Co. Lit.* 138b-139.



*Migg.* pur Willem demanda iugement de sa noun seute.

*Herle.* Vous nestes my receu vncore a defendre vostre droit. par qei vous nestes my vncore partie ensi qe vous poet la noun seute chalenger.

*Migg.* Sire nous prioms pur lauauntage le R(oi) qil seit demande.<sup>1</sup>

*Berr.* ly fit demander qil vynt ou il perdr(eit) soun bref.

Et adunqe il vynt et pur ceo qe les tenaunz ne vyndrent pas et aueynt fet defaute a procheyn iour demaunda iugement et pria seisine de tere par sa defaute.

*Migg.* W. vous dit qe Ion et Ioane sa femme ne vnt ren en ceus tenemenz si noun a terme de vie du lees mesme cesti W. et prie estre receu a defendre soun dreit.

Et fut receu. et demanda iugement du bref. qil dit qe mesme cesti Ion de Moubray porta soun bref deuers lauaunt dit Ion Beneth et Ioane sa femme et deus autres et dit qe ore<sup>2</sup> fut Ion demande a la seute de deus et ne vynt poynt par qei fut agarde <sup>3</sup>par qei fut agarde<sup>3</sup> qil ne prit ren par soun bref. et qil fut amercie par sa noun seute. iugement si a teu bref qest termine par noun seute deyue estre r(espondu).

*Herle.* Vous estes receu a defendre vostre dreit par qei vous nauet ren forqe a defendre vostre dreit. et ceo qe vous alegget ore. si est en abatement du bref. par qei vous ne deuert a ceo auenir.

*Berr.* Tut vst il plede oue vous tank al enqueste et ele fut pryse. nous ne tendroms auaunt le plee. si nous porroms aperceyuere qe le bref fut noun suy.

*Scrop.* Sire nous vous dioms qe cesti Ion de Moubray porta cesti bref vers mesme cesti Ion et Iohane et deus autrez par diuerse *precipez* dunt tot seit il noun suy qaunt a lun <sup>4</sup>*precipe*.<sup>4</sup> de cele noun seute ne put nul homme auer auauntage. mes cely <sup>5</sup>vers qi<sup>5</sup> la noun seute fut agarde. mes vous ne dites pas qe nous fumes demande a vostre seute. par qei etc.

*Migg.* Cesti bref est vn en sey et auet truue deus plegges cum a

<sup>1</sup> *Add*: a derein *F*.      <sup>2</sup> heer *F*.      <sup>3-3</sup> *Om.* *F*.      <sup>4-4</sup> les deuz *precipes* *F*.  
<sup>5-5</sup> ceux a qi seute *F*.

*Miggeley* for John of Aungeruille demanded judgment of his non-suit.

*Herle.* You are not yet received to defend your right and therefore you are not yet a party so that you could challenge the non-suit.

*Miggeley.* Sir, we pray for the advantage of the King<sup>1</sup> that he be called.<sup>2</sup>

BEREFORD C.J. caused him to be called to come or he would lose his writ.

And then he came. And since the tenants came not, and had made default on the next day, he demanded judgment and prayed seisin of the land, by reason of their<sup>3</sup> default.

*Miggeley.* John of Aungeruille tells you that John and Margaret his wife have nothing in these tenements except for term of life, of the lease of this same John of Aungeruille.<sup>4</sup> And he prays to be received to defend his right.

And he was received. And he demanded judgment of the writ. For he said that that same John of Moubray brought his writ against the said John Benet and Margaret his wife and two others. And he, John of Aungeruille, said that John had yesterday<sup>5</sup> been called at the suit of the two and that he did not come, wherefore it had been awarded that he should take nothing by his writ, and that he should be amerced for his non-suit. Judgment whether he ought to be answered in a writ which is terminated by his non-suit.

*Herle.* You are received to defend your right and therefore you have but to defend your right; and that which you allege now is in abatement of the writ. So you cannot get to that.

BEREFORD C.J. Even if he had pleaded with you up to the inquest and the inquest had been taken, we would not entertain the plea if we could perceive that the writ was non-sued.

*Scrope.* Sir, we tell you that this John of Moubray brought this writ against this same John and against Margaret his wife and against two others, with separate (clauses of) *precipe*. Therefore albeit that he was non-suited as to the one *precipe*, of that non-suit no one can have the advantage but only he against whom the non-suit was awarded. But you do not say that we were called at your suit. Therefore etc.

*Miggeley.* This writ is one in itself, and you have found two pledges as for one writ, and the summons was one. Therefore it seems

<sup>1</sup> Either because the plaintiff would be amerced or else because it is to the King's advantage that a suit concerning land held of him *in capite* should go on to a decision. Cf. Case 11, p. 40.

<sup>2</sup> See p. 1, n. 5.

<sup>3</sup> The MS. has 'his' (*sa*).

<sup>4</sup> We give the name as John in accordance with the Record.

<sup>5</sup> Supplied from *F*.



vn bref. et la somounce vne par quei il semble qe depus qe la noun seute fut agarde en <sup>1</sup>dreit de<sup>1</sup> deus. qe tot le bref est a <sup>2</sup>tere etc.<sup>2</sup>

*Scrop.* Qant la noun seute fut agarde<sup>3</sup> en dreit de deus fut agarde qil alassent a deu saunz iour. mes en droit de vous nul agard se fyt. par quei endaunt <sup>4</sup>regard a<sup>4</sup> vous le bref est cum auant. iugement.

*Et sic pendet.*

## II.<sup>5</sup>

De recto.

Iohan de Moubrey porta vn bref de droit vers treis persons par diuers *precipes*. vers les deus il fu nounsuy. le terce fist defaute apres defaute.

Iohan pria seisine de tere par sa defaute.

*Migg.* Vous auetz si vn A qe vous dit qil nad rien en les tenemenz sinoun a terme de vie et de nostre lees. parmy cel fet qe si est et la reuersioun a nous et il voet perdre les tenemenz par coll(usi)on et symus venuz auaunt iugement rendu et prioms de estre receu a defendre nostre droit.

*Scrop.* Seit receu.

*Migg.* Sire il ad porte cesti bref vers nous et vers ij autres vers quex deus il est nounsuy et le sum(ounce) deit estre vn. en luy mesme par quey sil abat(e) par nounsute en partie il abat(e) en tot(e) iugement si a cesti bref deit il estre r(espondu).

*Herle.* Vous priastes de estre receu a defendre vostre droit et ore demandez iugement del bref qe nest pas en defens de vostre droit iugement. Daltrepart chescun *precipe* sert en leu de bref et est vn bref en luy mesme et mes qil seit nounsuy vers vn vnkor purra il syure vers vn altre qe nounsute ne sera iammes entree si noun par profre de partie et coment qil fu nounsuy vers les deus qe se profrerent la syute vers le terce qest nome en vn seueral *precipe* et qe vnke vnkor se profri demoert en sa force iugement sil ne deit estre r(espondu).

*Scrop.* Si les deus vsent mis auaunt quitel(amaunces) et il les vst desdit et troue fu qil furent cez fez vnkor r(espondreit) le terce auxi parde sa.

*Ber.* Le sum(ounce) est vn en luy mesme qe ne poet en partie estre defait et en partie esteire et auxi il ne troua qe ij plegg(es) les quex

<sup>1-1</sup> vers les *F*.

<sup>2-2</sup> abatu et demaundoms iugement *F*.

<sup>3</sup> *Add*:

vers nous *F*.

<sup>4-4</sup> En droit de *F*.

<sup>5</sup> From *E*.

that since the non-suit was awarded in regard to the two, the whole writ is down etc.

*Scrope.* When the non-suit was awarded in regard to the two, it was awarded that they should go without day (and they were bidden) adieu. But in regard to you no award was made. Therefore in regard to you the writ is as before. Judgment.

And thus the cause is pending.

## II.

Of right.

John of Moubray brought a writ of right against three persons with separate (clauses of) *precipe*. Against two he was non-suited, the third made default after default.

John prayed seisin of the land by reason of his default.

*Miggeley.* You have here one A who tells you that he (the defendant) has nothing in the tenements except for term of life by our lease by this deed which is here, and the reversion belongs to us. And he wants to lose the tenements by collusion. And we have come before judgment has been given and we pray to be received to defend our right.<sup>1</sup>

*Scrope.* Let him be received.

*Miggeley.* Sir, he has brought this writ against us and against two others against whom he is non-suited, and the summons ought to be one in itself. Therefore if by non-suit it abates in part, it abates entirely. Judgment whether he ought to be answered to this writ.

*Herle.* You prayed to be received to defend your right and now you demand judgment of the writ, and that is not in defence of your right. Judgment. Moreover, each *precipe* serves instead of a writ and is in itself a writ and though he be non-suited against one still he will be able to sue against another. For non-suit will never be entered except on appearance of the party, and although he was non-suited against the two who have proffered themselves, the suit against the third, who is named in a separate *precipe* and who so far has never proffered himself, remains in force. Judgment whether he ought not to be answered.

*Scrope.* If the two had put forward quit-claims and if he had denied them and if it had been found that they were his deeds, still the third would answer. The same rule applies here.

BEREFORD C.J. The summons is one in itself for it cannot in part be defeated and in part stand. Besides, he has found but two

<sup>1</sup> In accordance with the Statute of Westminster II, c. 3.



sount amercies pur sa nounsute par quei il semble qe le bref par sa nounsute est tot(e) a la tere.

*Scrop.* Il ny ad nul iugement rendu mes qe luy et cez plegg(es) furent en la mercy pur sa nounsute et les deus qe se profrerent a dieu saunz iour vnk(ore) le terce demoert nent departi par iugement saunz iour par qay il nous semble qil deit respondre.

Et al dareyn fu agarde qil r(espondist).

### III.<sup>1</sup>

Entree <sup>2</sup>porte uers femme tenant en dowere. ou vn vint et pria destre receu a defendre son dreit pur la defaute la femme et fut receu et dit qe cely qe fut demandaunt porta son bref uers iii. ou il fut nounsuy uers lun iugement etc.<sup>2</sup>

Iohan de Mounbray<sup>3</sup> porta son bref dentre vers vne femme qe fit defaute et puis vint en Court et gagea la ley de noun som(ounce) et puis feut esson(ee) et puis fit defaute par qei le demaundant pria seisine de terre.

*Migg.* La femme nad rien forsque en noun de dowere de nostre heritage et prioms estre receu.

Et<sup>4</sup> feut <sup>4</sup>receu.<sup>4</sup> et puis dit qe cesti bref est<sup>5</sup> porte vers iii issint<sup>6</sup> a la xv. de Pasche lan quinte I. feut noun siwy vers S. qe se profrit etc. et demaundoms iugement si a cesti bref deuez estre r(espond)u depuis qe vous feustes autrefoitz noun siwy.

*Scrop.* Le bref feut porte vers iii par diuers *pre(cipes)* et nensiwit mesqe nous sumus noun siwy vers vn qe nous sumus noun siwy vers touz.

*Migg.* De puis qe cesti bref est vn et les plegg(es) furent amerciez a cesti bref iugement.

*Scrop.* Mesqe les deus eussent mys auant quitecl(a)m(ance) la quele ieo ne porray mye auoir dedit et iugement se freit sur cel vnquore le terce r(espondreit) nient countreesteant le iugement.

*Herle.* Ceo nest mye semblable.

*Herle.*<sup>4</sup> La noun siwte qe feut entre feut a la siwte S. ou la femme ne se profri ne ne feut demaunde par qei nous ne po(m)s vers la femme estre noun siwy.

*Berr.* Auquns gentz diont si en<sup>4</sup> vn bref il<sup>4</sup> soit noun siwy qil est

<sup>1</sup> From *M*. Compared with *B*. Headnote from *B*. <sup>2-2</sup> The headnote in *M* is partly destroyed. It runs: Entre vers . . . ou tenant . . . apres ceo q(il) . . . gagea la ley . . . som(once) etc. et p . . . noun swy . . . y auoient. <sup>3</sup> Moubray *B*. <sup>4</sup> *Om. B.* <sup>5</sup> fust *B*. <sup>6</sup> *Add: qe B.*

pledges who are amerced for his non-suit. Therefore it seems that by his non-suit the writ is wholly down.

*Scrope.* No judgment has been given although he and his pledges were in mercy for his non-suit, and the two who proffered themselves were bidden adieu without day, yet the third remains not dismissed by judgment without day. Therefore it seems to us that he ought to answer.

And finally it was awarded that he should answer.

### III.

Writ of entry<sup>1</sup> brought against a woman, a tenant in dower, where one came and prayed to be received to defend his right, because of the woman's default. He was received and said that he who was the demandant had brought his writ against three and was non-suited against the one. Judgment etc.

John of Moubray brought his writ of entry against a woman who made default, and then came into Court and waged the law as to not having been summoned, and then essoined herself, and then made default. Therefore the demandant prayed seisin of the land.

*Miggeley.* The woman has nothing except in the name of dower of our heritage, and we pray to be received.

And he was received, and then he said that this writ was brought against three, and that in a fortnight from Easter in the fifth year J. was non-suited against S. who had proffered himself. And we demand judgment whether you ought to be answered to this writ, since aforetime you were non-suited.

*Scrope.* The writ was brought against three with separate (clauses of) *precipe*, and although we are non-suited against one, it does not follow that we are non-suited against all.

*Miggeley.* Since this is one writ, and the pledges of this writ have been amerced, judgment.

*Scrope.* Even if the two had put forward a quitclaim which I could not have denied, and judgment were given thereupon, yet the third would answer notwithstanding the judgment.

*Herle.* This is not a similar case.

*Herle.* The non-suit which has been entered was at the suit of S., when the woman had neither proffered herself nor been called. Therefore we cannot be non-suited against the woman.

BEREFORD C.J. Some people say that if, in the case of one writ,

<sup>1</sup> Notice the inexact statements of this report; it was evidently compiled from short notes in which secondary points like the nature of the tenancy and of the writ had been left uncertain.



noun siwy <sup>1</sup>en touz<sup>1</sup> de puis qil nad forsqe vn som(ounce) et vne foitz plegg(es) troue.

*Herle.* Depuis qil ne peut dire qe nous sumus noun siwy vers la femme par qi defaute il sount r(ece)uz la ou ele ne se profri ne il ne dient autre chose pour lour droit defendre iugement etc.

IV.<sup>2</sup>

Prier estre receu.

Ion Mounbray porta Bref Dentre par defaute del tenaunt vn estraunge fust receu a defendre son dreit et dist par *Migg.* qe ceo Bref est porte vers iij et vous feustes non siwy vers vn. Iugement si a ceo bref serez r(espondu).

*Scrop.* Le Bref comprend iij precipes et tut fu(s)oms noun siwy vers vn vncore esterra le bref vers Les autres. Car checun *precipe* est en lieu dun bref par ly.

*Berford.* Acune gentz dient qe si bref soit noun siwy en partie ergo en tut. qar il ni ad qe vn foiz pl(e)g(es) troue.

*Et pendet.*

## Notes from the Record.

## I.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 45 verso. Leicestershire.  
Written by Luding'.

Iohannes de Moubray per simonem de Aymunderby attornatum suum optulit se iij die uersus Iohannem Benet et Margaretam vxorem eius de placito medietatis vnus mesuagii cum pertinenciis in Meltone Moubray quam clamat vt Ius etc.

Et ipsi non ven(erunt) Et alias fecerunt defaltam scilicet A die sancti Hillarii in xv dies anno regni domini Regis nunc quarto postquam esson' etc. Ita quod tunc preceptum fuit (*sic*) quod caperet predictam medietatem in manum domini Regis Et dies etc. Et quod summoneret eos quod essent hic a die sancte Trinitatis in xv dies proximo sequentes Ad quem diem vicecomes mandauit quod breue adeo tarde etc. Ita quod sicut prius tunc preceptum fuit vicecomiti quod caperet predictam medietatem in manum domini Regis Et dies etc. Et quod summoneret eos quod essent hic in crastino sancti Martini anno regni domini Regis nunc quinto etc. Ad quem diem vicecomes mandauit diem capcionis et quod summonuit etc.

<sup>1-1</sup> uers touz (*interlined*) B.

<sup>2</sup> From X.

(the plaintiff) is non-suited, he is non-suited <sup>1</sup>against all,<sup>1</sup> since there is only one summons and pledges are found only once.

*Herle.* Since he cannot say that we are non-suited against the woman by whose default (it is that) they are received, because she has not proffered herself, and since they do not say anything else in defence of their right, judgment etc.

#### IV.

Prayer to be received.

John of Moubray brought a writ of entry. By default of the tenant a stranger was received to defend his right, and said by *Miggeley*. This writ is brought against three and you have been non-suited against one. Judgment whether to such a writ you will be answered.

*Scrope.* The writ comprises three *precipes* and although we had been non-suited against one, yet the writ will stand against the others. For each *precipe* takes the place of a writ by itself.

BEREFORD C.J. Some people say that if a writ be not sued in part thereby it is wholly (down). For it is but once that pledges have been found.

And the cause is pending.

#### Notes from the Record.

##### I.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 45 verso. Leicestershire.  
Written by Luding'.

John of Moubray by Simon of Aymunderby, his attorney, presented himself on the fourth day against John Benet and Margaret his wife in a plea of one moiety of one messuage with the appurtenances in Melton Mowbray, which he claims as the right etc.

And they have not come. And before now they had made default, to wit, on the quindene of St. Hilary in the fourth year of our Lord the King who now is, after the essoin(ers) etc. So that at that time (the sheriff) was commanded to take the said moiety into our Lord the King's hand; and the day etc. and to summon them to be here on the quindene of the Holy Trinity then next following. On which day the sheriff sent word that (he had received) the writ so late etc. Therefore at that time the sheriff was commanded *sicut prius* to take the said moiety into our Lord the King's hand; and the day etc., and to summon them to be here on the morrow of Martinmas in the fifth year of our Lord the King who now is etc. On which day the sheriff sent word as to the day of the taking, and that he summoned etc.

<sup>1-1</sup> Supplied from B.



**Notes from the Record—continued.**

Ita quod predicti Iohannes et Margeria tunc vadiauerunt legem etc. Et habuerunt partes hinc inde diem vsque a die Pasche in tres septimanas proximo sequentes.

Ad quem diem predicti Iohannes et Margeria fecerunt se esson(iari) uersus predictum Iohannem de Moubray de predicto placito Et habuerunt diem per esson(iatores) suos hic ad hunc diem scilicet a die sancti Michaelis in xv dies etc.

Et predictus Iohannes de Moubray petit seisinam sibi adiudicari per defaltam ipsorum Iohannis et Margarete etc.

Et super hoc venit quidam Iohannes de Aungeruille et dicit quod mesuagium vnde predictus Iohannes de Moubray modo petit medietatem etc. aliqu(ando) fuit in seisina ipsius Iohannis de Aungeruille qui de seisina sua mesuagium illud concessit et dimisit predictis Iohanni Beneyt et Margarete Tenendum ipsis Iohanni Beneyt et Margarete ad terminum vite vtriusque ipsorum Iohannis et Margarete etc. Ita quod post decessum eorundem Iohannis et Margarete mesuagium illud cum pertinenciis ipsi Iohanni de Aungeruille et heredibus suis reuertatur etc. Et profert partem indenture cuiusdam scripti inde inter eos facti, que predictam dimissionem testatur in forma predicta, vnde dicit quod predicta medietas modo petita est ius suum et petit admitti ad defensionem predicte medietatis per statutum etc.

Et admittitur etc.

Et idem Iohannes de Moubray petit versus eum predictam medietatem cum pertinenciis vt Ius etc. per pre(cipe) in Ca(pite).

Et Iohannes de Aungeruille dicit quod non debet ei inde respondere etc. Dicit enim reuera quod predictus Iohannes de Moubray tulit predictum breue precipe in Capite tam versus quosdam Rogerum filium Iohannis de Aungeruille et Iohannem de Aungeruille quam versus predictos Iohannem Benet et Margaretam de diuersis ten(ementis) per diuersa Precipe in vno eodem breui. vbi predicti Rogerus et Iohannes de Aungeruille de tenenciis suis recesserunt quieti per non sectam ipsius Iohannis de Moubray prout patet in termino nunc rotulo xxi. Et ex exquo (*sic*) predictus Iohannes de Moubray tunc non fuit prosecutus predictum breue suum, per quod consideratum fuit quod idem Iohannes de Moubray et plegii sui de proseguendo: essent in misericordia: non intendit quod Curia ista habeat iurisdic(c)ionem seu Warantum tenendi placitum istud per illud idem breue etc. et petit iudicium etc.

Dies datus est eis hic a die sancti Hillarii in xv dies in eodem statu quo nunc etc.

Postea ad diem illum venit predictus Iohannes de Moubray per attornatum suum Et similiter predictus Iohannes de Aungeruille.

Et predictus Iohannes de Moubray sicut prius petit uersus eum predictam

**Notes from the Record—continued.**

And (on that day) the said John and Margaret waged the law etc. And the parties had thereupon a day in this matter in three weeks from Easter next following.

On which day the said John and Margaret caused themselves to be essoined against the said John of Moubray in the said plea. And they had a day by their essoiners here on this day, to wit, on the quindene of Michaelmas etc.

And the said John of Moubray prays that seisin be adjudged to him by the default of the said John and Margaret etc.

And thereupon comes one John of Aungeruille and says that the messuage whereof the said John of Moubray now demands a moiety etc. was at one time in the seisin of him the said John of Aungeruille, who from his seisin did grant and demise that messuage to the said John Benet and Margaret, to hold to them the said John Benet and Margaret for the term of the lives of both of them (*i.e.*) John and Margaret etc.; so that after the decease of John and Margaret the said messuage with the appurtenances should revert to the said John of Aungeruille and his heirs etc. And he proffers a part of an indenture made between them in this matter, which witnesses the said demise in the aforesaid form; and as to this he says that the moiety now in demand is his right and he prays to be admitted by statute etc. to defend the said moiety etc.

And he is admitted etc.

And the said John of Moubray demands against him the said moiety with the appurtenances as the right etc. by a *precipe in capite*.

And John of Aungeruille says that he ought not to answer him in this matter etc. For he says indeed that the said John of Moubray brought the aforesaid writ (of) *precipe in capite*,<sup>1</sup> as well against one Roger the son of John of Aungeruille and one John of Aungeruille, as against the aforesaid John Benet and Margaret, for divers tenements by divers (clauses of) *precipe* in one and the same writ; and the said Roger and John of Aungeruille were then discharged acquitted as to their (respective) tenancies, because of the non-suit of the said John of Moubray, as appears in (the records of) the present term on Roll 21.<sup>2</sup> And since at that time the said John of Moubray did not prosecute his said writ, so that it was considered that the said John of Moubray and his pledges for prosecution be in mercy—he does not think that this Court has a jurisdiction or warrant to hold this plea upon that same writ etc. And he prays judgment etc.

A day is given them here on the quindene of St. Hilary in the same state in which now etc.

Afterwards on that day there came the said John of Moubray by his attorney, and likewise the said John of Aungeruille.

And the said John of Moubray demands against him, as before, the said

<sup>1</sup> The famous provision of the Great Charter (c. 34) does not apply because the litigation by writ of right takes place between tenants-in-chief. No mesne

lord is threatened with loss of court (*cf.* McKechnie, *Magna Carta*, p. 350, n. 2).

<sup>2</sup> See below p. 7, Note II. from the Record.



**Notes from the Record—continued.**

medietatem cum pertinenciis vt Ius et hereditatem suam per predictum pre(cipe) in Ca(pite). Et vnde dicit quod quidam Willelmus antecessor suus fuit seisis de predicta medietate cum pertinenciis in dominico suo vt de feodo et Iure tempore pacis tempore Henrici Regis aui domini Regis nunc capiendo inde explet(as) ad valenciam etc. Et de ipso Willelmo descendit Ius etc. cuidam Rogero vt filio et heredi Et ipso (*sic*) Rogero etc. cuidam Rogero vt filio et heredi Et ipso (*sic*) Rogero descendit Ius etc. isti Iohanni de Moubray qui nunc petit vt filio et heredi. Et quod tale sit Ius suum offert etc.

Et Iohannes de Aungeruille dicit quod predictum tenementum dudum fuit in seisina cuiusdam Rogeri de Sadingtone qui tenementum illud dedit ipsi Iohanni de Aungeruille et cuidam Elene vxori eius Tenendum ipsis Iohanni et Elene et heredibus de corporibus eorum legitime procreatis, vnde idem Iohannes dicit quod ipse post mortem predictae Elene ten(et) predictum tenementum per formam donacionis predictae. Et in forma predicta vocat inde ad Warantum Rog(eru)m filium Raginaldi de Sadingtone.

Habeat eum hic a die sancte Trinitatis in xv dies per auxilium Curie. Et sum(monetur) in eodem Comitatu etc.

Et predictus Iohannes de Aungeruille posuit loco suo Reginaldum de Ingwardeby etc.

**II.**

**De Banco Roll 195a, Mich. 6 Edw. II., membr. 21 recto. Leicestershire.**

**Written by Luding'.**

Rogerus filius Iohannis de Aungeruille et Iohannes de Aungeruille per Reginaldum de Ingwardeby attornatum suum optulerunt se iiii die uersus Iohannem de Moubray de placito quod idem Rogerus reddat ei duo mesuagia cum pertinenciis in Meltone Moubray Et de placito quod predictus Iohannes reddat ei vnum mesuagium tres virgatas terre et medietatem vnus mesuagii cum pertinenciis ex(ceptis) duabus acris terre et dimidia in eadem villa etc.

Et ipse non venit Et fuit petens.

Ideo predicti Rogerus et Iohannes de Aungeruille inde sine die et predictus Iohannes de Moubray et plegii sui de proseguendo scilicet Iohannes Brid de Meltone et Willelmus prepositus de eadem in misericordia.

**2. ANON.<sup>1</sup>**

De recto. nota.

Bref de dreit fut porte en le Hustenge de Loundres. le tenant vocha vn forein a gar(antie) par qei la parole fut aiourne en Banke qant la parole fut en banke le tenant suyt bref hors des Roules de som(ondre)

<sup>1</sup> From *P*.

**Notes from the Record—continued.**

moiety with the appurtenances as his right and inheritance by the aforesaid *precipe in capite*. And concerning this he says that one William, his ancestor, was seised of the said moiety with the appurtenances in his demesne as of fee and of right in time of peace in the time of King Henry grandfather of our Lord the King who now is, taking thence esplees to the value etc. And from that William the right etc. descended to one Roger as son and heir; and from that Roger etc. to one Roger as son and heir; and from that Roger the right etc. descended to this John of Moubray who now demands as son and heir. And that such is his right he offers etc.

And John of Aungeruille says that the said tenement was formerly in the seisin of one Roger of Sadingtone, who gave that tenement to this John of Aungeruille and to one Helen his wife, to hold to them the said John and Helen and to the heirs of their bodies lawfully begotten; and the same John says that he holds the said tenement, after the death of the said Helen, by the form of the aforesaid gift—and in the aforesaid form he vouches in this matter to warrant Roger the son of Reynald of Sadingtone.

He is to have him here on the quindene of the Holy Trinity by aid of the Court etc. And he is to be summoned in the same county etc.

And the said John of Aungeruille put in his place Reynald of Ingwardeby etc.

**II.**

De Banco Roll 195a, Mich. 6 Edw. II., membr. 21 recto. Leicestershire.

Written by Luding'.

Roger the son of John of Aungeruille and John of Aungeruille by Reynald of Ingwardeby their attorney presented themselves on the fourth day against John of Moubray in a plea that the said Roger restore to him two messuages with the appurtenances in Melton Mowbray; and in a plea that the said John restore to him one messuage, three virgates of land, and the moiety of one messuage with the appurtenances, excepting two and a half acres of land, in the same vill etc.

And he has not come. And he was the demandant.

Therefore the said Roger and John of Aungeruille hence without a day, and the said John of Moubray and his pledges for prosecution (to wit, John Brid of Melton and William the reeve of the same) in mercy.

**2. ANON.**

Of right. Note.

A writ of right was brought in the husting<sup>1</sup> of London. The tenant vouched an outsider to warranty.<sup>2</sup> Therefore the cause was adjourned into the Bench. When the cause was in the Bench the tenant sued a

<sup>1</sup> See Pollock and Maitland, *Hist. cp: 2 Inst.* 324-327; *Mun. Gild. Lond. Engl. Law*, i (2nd ed.), 658; Lord *Liber Albus* (Rolls Ser.), i, pp. 181-190. Halsbury's *Encyclopædia*, ix, 176f; as to <sup>2</sup> See *Liber Custumarum*, i, pp. 169-179.



le voche qe vint en Court et gar(antist) al tenant par qei dit fut al gar(ant) qil alast al Hustenge de pleder al d(emaun)dant et qe le d(emaun)dant suefit bref et qant la parole soit reuenue al Husteng(e) si le gar(ant) ne vigne pas la def(aute) sera recorde et pur ceo qil ne poe(n)t fere proscs de cele def(aute) la parole sera derechef aiourne en banke et la auera il proscs sur la def(aute) le garaunt.

### 3. ANON.<sup>1</sup>

En vn bref de droit le frere meluel porta vers soun frere qe nasquit hors des esposailles, fu r(espondu) par

*Denom.* Bien et verite est qe H. fust en son demesne com de fee et de droit et vous dioms qe cest(i) Richard est le fitz H. et esne et apres la mort H. il entra com fitz eisne et heir et est einz com fuitz et heir iugement si vers luy poez accion auoir.

*Et concordant(ur)* etc.

### 4. TILTONE v. DAUY.<sup>2</sup>

#### I.<sup>3</sup>

Douwer ou dit fut qe son baron ne fut vnqe seisi a qi ele ne pout pas estre receu en contre vne fyn *que cal(umpniata) est* etc. Ou fut dit qe lauerement qil tenderent ne fut pas a la voidaunce du fin *vt patet* par re(pon)z *Scrop in fine*.

Margerie qe fut la femme Richard de Tiltone porta soun bref de douwere deuers vne Alice et demaunda la terce partie de certeinz tenemenz dil douement Ion soun baroun.

*Denom.* Nous vous dioms qe soun baroun ne fut vnqe seisi qe douwer la pout et pret etc.

*Herle.* Ceo ne put ele dire. Car vne fyn se leua teu ior an et lu. deuaunt etc. de mesme les tenemenz entre mesme cest(e) A. et Ion

<sup>1</sup> From *T*.    <sup>2</sup> Reported by *B, F, G, M, R, X* (twice). This is Vulg. 12.

<sup>3</sup> From *G*. Compared with *B, F, M*. In *G* the report is divided into two parts which appear in two different parts of the MS. The second part corresponds, on the whole, with the report in *B* and *M*.

writ out of the rolls to summon the vouchee. The vouchee came into Court and warranted to the tenant. Therefore the (warrantor) was told to go to the husting to plead against the demandant and (it was said) that the demandant should sue a writ, and when the case would have come back to the husting if the (warrantor) did not come the default would be recorded, and because they could not proceed upon such default the case would then be adjourned into the Bench and there would<sup>1</sup> the demandant have the process<sup>1</sup> upon the default of the warrantor.

### 3. ANON.

In a writ of right (which) the middle brother brought against his brother who was born out of wedlock, it was answered by

*Denom.* It is quite true that H. was (seised) in his demesne as of fee and of right. But we tell you that this Richard is the son of H., and eldest son, and after the death of H. he entered as eldest son and heir, and he is in as son and heir. Judgment whether you can have an action against him.<sup>2</sup>

And they made concord.

### 4. TILTONE *v.* DAUY.

#### I.

Dower where it was said that her husband had never been seised, and that she could not be received against a fine, and this latter was challenged etc. And it was said that the averment which they tendered was not in avoidance of the fine, as will be seen from the answer of *Scrope* at the end.

Margery, widow of John of Tiltone,<sup>3</sup> brought her writ of dower against one Alice and demanded the third part of certain tenements by the endowment by John her husband.

*Denom.* We tell you that her husband was never seised so that he could not endow her and (we are) ready etc.

*Herle.* That she cannot say, for a fine was levied on such day, in such year, at such place, before etc. as to (these) tenements between

<sup>1-1</sup> or : proceedings take place.

<sup>2</sup> This was evidently a case of special bastardy, the elder brother having been born before wedlock. Cf. Pollock and Maitland, *Hist. of Engl. Law*, ii (2nd edit.), 382. Coke upon Littleton, f. 2448.

<sup>3</sup> In 1298 John of Tiltone, who had found surety to go abroad on the King's service and had afterwards pleaded infirmity and sent John Neuton in his

place (*Cal. Pat.* 1292-1301, p. 391). was pardoned for sending and receiving John son of Simon of Skeffington. William of Tiltone and others outlawed for the death of Simon (*ibid.*), and his goods were restored to him (*Cal. Close* 1302-7, p. 352). He was still living in 1306, when he is mentioned as a creditor of Sir William Burdet (*ibid.* p. 425).



nostre baroun par la quele fin Alice conust les tenemenz estre le dreit Ion cum ceus qe Ion auoyt de soun doun. pur quele conissaunce Ion graunta et rendy mesme les tenemenz a A. a tenir etc. et vous dioms qe M. a cele tens fut la femme Ion. iugement si a cel auerement en contre la fyn deuuet auenir.

*Denom.* Cest vn bref ou nous suffyt dauerer qe soun baroun ne fut pas seisi issi etc. le ior de les espousailles ne vnqe puis par qei etc.

*Toud.* Nous auoms fyn qe testmoigne qvele fut seisi par vostre conyssaunce demesne et vous rendy les tenemenz auaunt diz et ensi preytes v(ous) estat qe vous auet par la fyn. par qei vous ne seret my receu dauerer qil ne fut my seisi.

*Scrop.* Nous auoms dit qil ne fut my seisi ior de les esposailles. ne peus etc.

*Herle.* Vous auet dit. qil ne fut vnqe seisi etc. dunt si nous descendissoms en enqueste. et trueue fut qil ne fut vnqe seisi. ceo seroit auoier la fyn. par qei ren ne remeynt a trier. fors le temps. cest a sauuer. si ele fut sa femme au tens qaunt la fyn se leua. ou noun Mes qe fut sa femme qaunt la fyn se leua. pret etc. par qei nous demaundoms iugement.

*Scrop.* Ceo qe nous tendoms dauerer nest my a la voidaunce de la fyn. car il put estre qil ne fut vnqe seisi peus le ior de les espousailles. et qil fut seisi auaunt les espousailles etc.

*Et sic pendet. Et sequitur infra in fine eiusdem termini ubi visus exigitur etc.*

<sup>1</sup> *Alio die vynt le tenaunt et demaunda la veuwe.*<sup>1</sup>

*Ston.*<sup>2</sup> La veuwe ne deuuet auoir qe vous entrates par nostre baron.

*Denom.* Prest dil auerer qe noun.

Adhuc de  
Tyltone vt  
supra eodem  
termino ou  
il demaunde-  
rent la veue.

<sup>1-1</sup> Here begins the second part of the report in *G*. This also corresponds with the beginning of the report in *B*, *F*, *M*. The headnote in *B* runs: Douwer ou la tenaunte demaunda la veue et fut ouste par vne fyn qe tesmoigneit qe le baron la demaundaunt fut seisi. et pus la tenaunte dit qe le baron la demaundaunt ne fut pas seisi qe dower la pout et ne fut pas receu pur la fyn. et pus la tenante woucha et *non obstante* le ple qe ele auoit plede ele fut receu de woucher. The headnote in *F* runs: Dowere ou le tenant ne fut pas rescew de auerer qe le baron ne fut pas seisi pus les esposailles issi qe dower etc. par resone de vne fyn Leue sur rendre qe supposa le reuers. et pus vocha agarrantie les deux fiz le baroun cum vn heir par reson de tenemenz qe furent departables et le vn fiz par resoun de tenemenz ala commune ley qe furent en la garde la femme demaundante ou ele vient et rendi dowere a ly meymes et dit qe nauoyt ren en noun de garde par resoun de lur noun age et fut a ceo receu. The passage marked <sup>1-1</sup> stands in *G* only. The report in *B* begins: Margerie qe fust la femme Iohan de Tiltone porta vn bref de douwer vers Alice qe fust la femme Richard Dauid et demaunda la terce partie etc. des certeynz tenemenz. *Denom.* nous demandoms la veue. The reports in *F* and *M* begin similarly, but *F* spells Dau and omits des certeynz tenemenz, while *M* spells Dauy. <sup>2</sup> Staunt'. *B*. In *F* Stanore is inserted after the original word has been scratched out. *M* has Stant'.

this same A(lice) and John our husband, by which fine Alice made conusance that the tenements were the right of John as those which John had by her gift, and for that conusance John granted and rendered the said tenements to A(lice) to hold etc. And we tell you that at that time M(argery) was the wife of John. Judgment whether you can get to such an averment in spite of the fine.

*Denom.* This is a writ in which it is sufficient for us to aver that neither on the day of the wedding nor ever afterwards her husband was seised so as etc. Therefore etc.

*Toudeby.* We have a fine which witnesses by your own conusance that he<sup>1</sup> was seised and rendered to you the said tenements and thus the estate which you have you took by the fine. Therefore you will not be received to aver that he was not seised.

*Scrope.* We have said that he was not seised on the day of the wedding nor afterwards etc.

*Herle.* You have said that he was never seised etc. Hence, if we were to agree upon an inquest and if it were found that he was never seised, that would go to the avoidance of the fine. Therefore nothing remains to be tried except the time, to wit whether at the time when the fine was levied she was his wife or no. But (we are) ready (to aver) that she was his wife when the fine was levied. Therefore we demand judgment.

*Scrope.* That which we offer to aver does not go to the avoidance of the fine. For it may be that he was never seised after the day of the wedding (but) that he was seised before the wedding etc.

And thus the cause is pending. And below, at the end of the same term, (the cause) is continued and the view is exacted etc.

On another day the tenant came and demanded the view.

*Stonore.* The view you cannot have, for you entered through our husband.

*Denom.* Ready to aver [we did] not.

More  
concerning  
Tilton as  
above in the  
same term  
where he  
demanded  
the view.

<sup>1</sup> It is clear from the context that this is the meaning, though the MS. has 'ele.'



*Ston.*<sup>1</sup> <sup>2</sup>A ceo ne deuet auenir<sup>2</sup> qe certain ior an et lu<sup>3</sup> se leua et vne fyn *scilicet* qe A. conust les tenementz dunt nous demaundoms la terce partie estre le dreit I. de Tyltone. et pur cele conissaunce I. graunta et rendy mesme les tenemenz a Alice par quei depeus qe la fyn testmoigne qil rendi iugement si a tel auerement deuet estre receu.<sup>4</sup>

*Herle.*<sup>5</sup> Vous estes estraunge a la fyn e mesqe <sup>6</sup>nous vossisoms<sup>6</sup> dedire la fyn vous ne seret my partie a trier la fyn.

*Scrop.*<sup>7</sup> Vous mesmes futes partie a la fin qest de record et testmoigne qe vous entrates par nostre baron. Et si vous fusset receu a cel auerement ceo seroit a voider<sup>8</sup> la fin.

*Denom.* Depeus qe vous nestes my pryue a la fyn et nous voloms auerer *vt supra* iugement.

*Herui.* Il mustre fyn qe testmoigne qe vous entrates par soun baron et pur ceo responez qe vous naueret my la vewe etc.

*Denom.* Nous voloms auerer qe soun baron ne fut vnqe seisi peus le ior qil la espousa ensi qe douwer la poyt.

*Scrop.*<sup>9</sup> A ceo nauendret mye qe la fin qe nous aleggoms<sup>10</sup> se leua lan xxxiiii du Roi qe mort est. et vous dioms qe a ceu tenps Ion de Tylton nous auoit espouse. iugement.

*Berr.* La fin ne testmoigne pas qe au temps de la fyn leue qe vous futes femme Ion. par quei la fyn nest pas <sup>11</sup>contrarie a<sup>11</sup> lour auerement.

*Herle.* Nous voloms auerer qe au tenps de la fyn leue nous fumes la femme Ion.

*Scrop.* Mes nous ne pooms plus largement <sup>12</sup>trauerser ne plus large<sup>12</sup> respounse doner en cesti bref de douwer qe trauerser la seisine le baron peus les espousailles. Et de peus qe nous tendoms cel auerement. le quel vous refuset. iugement.

*Inge.*<sup>13</sup> De chose qest de record home ne deit my prendre auerement. dunt endroit de partie de vostre auerement qest si generel la curt est acerte par record. Et endroit de ceo qele fut sa femme <sup>14</sup>au tenps etc.<sup>14</sup> il le voillent auerer. le quel vous refuset. Et dautrepart si vostre auerement fut receu ceo seroit <sup>15</sup>a voider<sup>15</sup> la fin.<sup>16</sup> et statut veet qe les aueremenz qe en auoidaunce <sup>17</sup>de la fyn<sup>17</sup> ne seyunt pas receuz. et il tendunt lauerement qele fut sa femme ior de la fin etc. oue

<sup>1</sup> Stanore (*original word scratched out*) *F*; Stant'. *M.* <sup>2-2</sup> al auerement ne deuez estre receu *B, F, M.* <sup>3</sup> Add: en ceste Court *B, F, M.* <sup>4</sup> Add: en coudre la fyn *B, F, M.*

<sup>5</sup> Scrop *B, M.* <sup>6-6</sup> vous vossistes *B, M.*

<sup>7</sup> Herle *B, M.* <sup>8</sup> defaire *B, M.* <sup>9</sup> Ston'. *B, M.* <sup>10</sup> Add: ore *F*; volloms allegger *M*; in *B* the volloms is cancelled. <sup>11-11</sup> directe le contrarie de *B, F, M.*

<sup>12-12</sup> Om. *B.* <sup>13</sup> Inge *B, M.* Ingg'. *F.* <sup>14-14</sup> Le iour qe la fin se leua *B, F, M.* <sup>15-15</sup> en voidaunce de *B, F, M.* <sup>16</sup> Add: par vn auerement *B, F, M.*

<sup>17-17</sup> sont en voidaunce des fyns *B, F, M.*

Nota en  
bref de  
dower ou le  
tenaunt  
entra par le  
baron. il  
nauera my  
la vewe.  
Et auxint  
en cas. ou  
le baron  
morust seisi  
de la  
demaunde.  
le tenaunt  
nauera pas  
la vewe.

*Stonore.* To that you cannot get, for on a certain day (in a certain) year (and at a certain) place a fine was levied, to wit that A(lice) made conusance that the tenements of which we demand the third part were the right of J(ohn) of Tiltone and for that conusance J(ohn) granted and rendered the said tenements to Alice. Therefore since the fine witnesses that he rendered (them), judgment whether he ought to be received to such an averment.

*Herle.* You are a stranger to the fine and albeit that we would deny the fine you would not be a party to the trying of the fine.

*Scrope.* You yourself were a party to the fine, which is of record and witnesses that you entered by our husband. And if you were received to such an averment that would go to the avoidance of the fine.

*Denom.* Since you are not privy to the fine and we are willing to aver (as above), judgment.

STANTON J. He shows a fine which witnesses that you entered by her husband and therefore answer, for you shall not have the view.

*Denom.* We are willing to aver that her husband was never seised after the day on which he married her so that he could (not) have endowed her.

*Scrope.* To that you cannot get, for the fine which we allege was levied in the thirty-fourth year of the late King, and we tell you that at that time John of Tiltone had married us. Judgment.

BEREFORD C.J. The fine does not witness that at the time when the fine was levied you were the wife of John. Therefore the fine is not contrary to their averment.

*Herle.* We are willing to aver that at the time when the fine was levied we were the wife of John.

*Scrope.* But we cannot traverse more fully or give a fuller answer, in this writ of dower, than to traverse the seisin of the husband since the wedding. And since we tender this averment and you refuse it, judgment.

*Inge.* On something that is of record one must not take an averment. Hence of that part of your averment which is so general the Court is certified by (matter of) record. And as to whether she was his wife at the time etc. they are willing to aver it, and you refuse that (averment). Moreover if your averment were received that would go to the avoidance of the fine, and the statute<sup>1</sup> orders that those averments which (go) to the avoidance of the fine be not received. And they tender the averment that she was his wife on the day of the fine etc. (and that is not in disagreement) with the fine which proves the

Note: In a writ of dower where the tenant entered by the husband he will not have the view. And also in a case where the husband died seised of the (tenement) demanded the tenant will not have the view.

<sup>1</sup> *Statutum de finibus*, c. I. (27 Edw. I.).



la fin. qe prue la seisine <sup>1</sup>soun baroun. par qei<sup>1</sup> <sup>2</sup>il semble<sup>2</sup> lor respons est asset pleyn.

*Scrop.* La cause dil estatut fut pur ceo. qe si le heir auaunt statut porta le mortdauncestre de la mort soun pere. et le tenaunt meist auaunt fyn qe se leua su<sup>3</sup> le rendre. le heir fut receu a dire qe le ior qe la fyn se leua auaunt et apres toz iours soun pere<sup>4</sup> seisi <sup>5</sup>saunz chaunger son estat. et<sup>5</sup> tel auerement<sup>6</sup> fut direct a voider la fyn mes issint nest il my en ceo cas. car la fyn put ester oue nostre<sup>7</sup> accioun. qe put estre qe la fyn se leua deuaunt<sup>8</sup> les esposailles.

*Inge.*<sup>9</sup> Cely qe veet estre eide par le statut *quia fines*. il couent qil seit pryue a la fyn<sup>10</sup> cel estatut est a entendre de<sup>11</sup> ceus qe furrent partie a la fyn par quele fin nous sumes acerte de la seisine <sup>12</sup>le baroun<sup>12</sup> par qei <sup>13</sup>volet lauerement qil vous <sup>14</sup>tendent. et si ne my<sup>13</sup> vous<sup>14</sup> aueret vostre iugement meynntenaunt.<sup>15</sup>

a.<sup>16</sup>

*Scrop.* Alice vous dit qele tynt mesme les tenemenz a terme de vye par la fyn qe se leua sur le rendre et vouchoms a garrantie par vertu etc. W. fitz et heir Ion de Tyltone qest de deinz age en la garde Margerie qe sera sommone etc.

*Will.* A ceo nauendret my. car autrefoye donates chef response. iugement si ore a teu voucher deuuet auenir.

Si home ad  
done chef  
response al  
accioun et  
cel ne seit  
de partie  
accepte : y  
peut voucher

*Scrop.* Le respons qe nous donames ne fut my accepte de la partie eynz fumes par la curt oste par la reson dune fyn. qe vous meytes auaunt la quele fyn nous chas(e) a voucher qe testmoigne nostre estat a terme de vye. et la reuersion a vn autre. iugement si nous ne le pooms voucher.

Et fut le voucher receu.

Et peus le vouche pleda mesme le plee et tendi mesme lauerement. Et peus fut chace de prendre lauerement qe soun baroun ne fut pas seisi le ior qil la espousa ne vnqe peus etc. nent contresteaunt le rendre etc.

*Quod accidit termino Trinitatis anno tercio decimo etc.*<sup>16</sup>

<sup>1-1</sup> Om. B, M.      <sup>2-2</sup> Om. B, F, M.      <sup>3</sup> sur B, F, M.      <sup>4</sup> Add: fust B, F, M.      <sup>5-5</sup> sur le gros ou estatut luy ouste de B, M.      <sup>6</sup> Add: qe B, M.      <sup>7</sup> vostre F.      <sup>8</sup> auaunt B, F, M.      <sup>9</sup> Pass. B, M. Ingg'. F.      <sup>10</sup> Add: qar B, F, M.      <sup>11</sup> entre B, F, M.      <sup>12-12</sup> etc. par record B, M.      <sup>13-13</sup> si vous ne diez aultre chose B, M.      <sup>14-14</sup> vnt tendu qele fut sa femme iour etc. qar lauerement qe vous tendez sereit a voider la fin et a ceo ne sereit receu pur ceo qe la court est ascerte de la seisine etc. par record par qei si vous ne diez aultre chose vous F.      <sup>15</sup> Add: et issint furent il oustez de lour auerement meynntenant B, M. Sim. F.      <sup>16-16</sup> This part is taken from G only; the corresponding part from F is given on next page as b, and is compared with B and M.

seisin of her husband. Therefore it seems that their answer is sufficiently full.

*Scrope.* The reason of the statute was that before the statute, if the heir brought the mortdancesthor of the death of his father, and the tenant put forward a fine that had been levied (upon the) rendering (of the tenements), the heir was received to say that on the day on which the fine had been levied, before it, and ever since his father had been seised without changing his estate; and such an averment would be aimed at the avoidance of the fine. In this case, however, that is not so, for the fine may stand together with our action. For it may be that the fine was levied before the wedding.

*Inge.* He that wishes to avail himself of the statute *Quia fines* must be privy to the fine. That statute must be taken as relating to those who were parties to the fine, by which fine we are certified of the husband's seisin. Therefore do you want the averment which they tender? And if not you shall have your judgment presently.

a.<sup>1</sup>

*Scrope.* Alice tells you that she has held these same tenements for term of life by the fine which was levied on the rendering, and we vouch to warranty by virtue etc. W. son and heir of John of Tiltone who is below age in the wardship of Margery who will be summoned etc.

*Willoughby.* To that you shall not get, for before now you gave (your) <sup>2</sup>main answer.<sup>2</sup> Judgment whether you can now get to such a voucher.

*Scrope.* The answer which we gave was not accepted by the party, but we were ousted by the Court by reason of a fine which you put forward. That fine drives us to vouch, for it witnesses our estate for term of life and the reversion to another. Judgment whether we cannot vouch him.

If one has given the main answer to the action, and it be not accepted by the party, one can vouch, etc.

And the voucher was received.

And afterwards the vouchee pleaded the same plea and tendered the same averment. And then (he) was driven to (accept) the averment that her husband was not seised on the day when he espoused her nor ever since, etc. (And that) notwithstanding the rendering etc.

And that happened in Trinity Term in the thirteenth year etc.

<sup>1</sup> See note 16 on the opposite page.

<sup>2-2</sup> Or, 'answer in chief.'



b.<sup>1</sup>

*Scrop.* Alice vous dit qele tient memes les tenemenz a terme de vie par la fin qe se leua sur le rendre et voche a garrantie par vertue de la fin <sup>2</sup>en dreit des terres en B. qe sunt departables<sup>2</sup> Willem et I. fiz et heirs Ion de Tiltone qe sunt de denz age en la garde Margerie qe fut la femme Ion de Tiltone qe serront somons en<sup>3</sup> <sup>4</sup>tiel Counte; Et<sup>4</sup> endroit de terre en A. qe sunt ala commune ley, ele voche a garrantie Willeme le fiz Iohan de Tiltone en la garde etc. qe sera summons etc.

*Wilby.* A ceo ne auendrez mie qar autre foitz donastes respons al accion et trauersates la seisine nostre baron. iugement si ore a tiel vocher auendrez amette vostre respons en autr(i) bouche deloure qe vous auez done response a nostre accioun.

*Scrop.* La response qe nous donames ne fut mie accepte de la partie einz fumes vste de nostre respons <sup>5</sup>par la curt<sup>5</sup> par la reson dune fin qe vous meytes auant la quele fin nous chaca de vocher qe tesmoign(eit) nostre estat a terme de vie et la reuersion a vn autre iugement si nous ne pooms voucher par ley.

Et le vocher fu receu de la court.

*Pass.* <sup>6</sup>Nous vochoms<sup>6</sup> cum auant<sup>7</sup> en dreit terre en A. etc.

*Herle.* iugement de ceo voucher qar vous vochastes<sup>8</sup> par la fin ou les tenemenz sunt a la commune ley qe sunt cumpris dedenz la fin ou la reuersion est tansoulement a W. <sup>9</sup>et vous vochastes<sup>9</sup> W. et I. auxi cum la reuersion fut a eux deux. iugement etc.

*Berr.* Il ad vouche solum son cas.

*Pass.* Ceste M. qest nome gardein en lur voucher. si est memes cele<sup>10</sup> qe porte cesti bref et est prest arendre et vous dist qele nad rien en noun de garde par reson del noun age W. et I. <sup>11</sup>et prest est arendre<sup>11</sup> a ly memes.

*Scrop.* Nous voloms auerer qele ad assetz en deus Contes.

Et pus fust laverement receu et pais grante de<sup>12</sup> ambedeus les Contes.<sup>1</sup>

<sup>1-1</sup> From *F*. Compared with *B*, *M*. <sup>2-2</sup> Interlined in later ink in *F*.  
*Om. B, M.* <sup>3</sup> From here to the end of *Scrop's* statement the passage in *F* is partly inserted, after the original entry had been scratched out, and partly written on the margin. <sup>4-4</sup> Interlined *B. Om. M.* <sup>5-5</sup> *Om. B, M.* <sup>6-6</sup> voucha  
 auxi *B, M.* <sup>7</sup> Add: et dit *B, M.* <sup>8</sup> vouchiez *B, M.* <sup>9-9</sup> ou vous auez  
 vouche *B, M.* <sup>10</sup> Add: femme *B, M.* <sup>11-11</sup> par qei ele poet rendre *B*.  
<sup>12</sup> From here to the end *B* and *M* have: del vn Counte et de lautre.

b.<sup>1</sup>

*Scrope.* Alice tells you that she holds the said tenements for term of life, by the fine which was levied upon the rendering, and she vouches to warranty, by virtue of the fine, as to the lands in B. which are partible, William and John, sons and heirs of John of Tiltone, who are below age in the wardship of Margery who was the wife of John of Tiltone, and they will be summoned in such a county; and as to the land in B. which is at the common law, she vouches to warranty William the son of John of Tiltone, in the wardship etc., who will be summoned etc.

*Willoughby.* To that you shall not get, for before now you gave answer to the action and you traversed our husband's seisin. Judgment whether now you can get to such a voucher (in order) to put your answer into another's mouth,<sup>2</sup> since you have given an answer to our action.

*Scrope.* The answer which we gave was not received by the party, but we were ousted of our answer by the Court, by reason of a fine which you put forward and which drove us to vouch, for it witnessed our estate for term of life and the reversion to another. Judgment whether we cannot vouch by law.

And the voucher was received by the Court.

*Passeley.* We vouch (as before) as to the land in A etc.

*Herle.* Judgment of this voucher; for you vouched by the fine; and whereas the tenements which are comprised in the fine are at the common law and the reversion belongs to William only, you did vouch William and John as if the reversion belonged to both of them. Judgment etc.

BEREFORD C.J. He has vouched according to his case.

*Passeley.* That Margery who is named in their voucher as guardian is the same woman<sup>3</sup> who brings this writ, and she is ready to render, but <sup>4</sup> she tells you that in the name of wardship by reason of the non-age of William and John she has nothing whereof <sup>5</sup>she could render<sup>5</sup> to herself.

*Scrope.* We are willing to aver that she has enough in (the) two counties.

And afterwards the averment was received and the country (was) granted from both counties.

<sup>1</sup> See note 1 on the opposite page.

<sup>2</sup> *I.e.* into the vouchee's mouth; for if the voucher were to stand, the 'answer in chief' would be given by the vouchee.

<sup>3</sup> Supplied from *B* and *M*.

<sup>4</sup> This gives a smoother reading than the original *et*.

<sup>5-5</sup> Supplied from *B*.



II.<sup>1</sup>

## Dower.

Margerie qe fust la femme Ion de Tiltone porta Bref de Dower vers Alice qe fust la femme Richard Dauby qe demanda la vewe.

*Ston.* Vous entrates par nostre baron par quei etc.

*Den.* Prest dauerer qe noun.

*Ston.* A cel auerement ne deuez auenir qar fyn se leua de mesmes les tenemenz entre vous et nostre baron ou vous conustes les tenemenz estre le dreit nostre Baron com ceo etc. pur quele conissaunce nostre baron graunta et rendi les tenemenz a vous iugement etc. si coudre la fyn.

*Denh.* Vous estes estraunge a la fyn.

*Tamen* ele feust oste de la vewe par agarde.

*Denh.* Son Baron ne fust vnqes seisi de ces tenemenz peus les esposailles prest.

*Ston.* A cel auerement nauendrez pas coudre la fyn et nous voloms auerer qe nous fumes sa femme a cel temps.

Et furent ostez del auerement par *Berford*.

*Denh.* Alice vous dit qele tient mesmes les tenemenz par la fyn a terme de vye par le rendre Ion de Tiltone et vous dioms qe Ion auoit terres partables en cel counte qe descendirent a Willem et Ion ses fitz et vouchoms mesmes ces W. et I. qi sount denz age et en la garde Margerie lour miere qe sera somouns en mesme le counte et en droit de fraunk fe qe W. ad par dec(ente) en autre counte si vouchoms W. soul qest en la garde mesme cele M. qe sera somouns en lautre counte.

*Ston.* Vous auez respondu a nostre accioun par quey vous nauendrez pas de voucher.

*Scrop.* Vous ne voderez pas accepter nostre respounce einz nous auez chace et done materie de voucher par la fyn qe vous allegeastes.

Et fust receu al vocher.

*Herle.* Vous vochez par la fyn W. et I. par reson de reuersion ou la reuersion par la fyn est a W. soul. Iugement de vocher.

*Berford.* Ils vouchent solom lour cas.

Et ag(arda) le voucher bon.

*Ston.* Nous sumes mesme cele Alice (*sic*) qe vous supposez estre

<sup>1</sup> From X (second version).

## II.

## Dower.

Margery wife that was of John of Tiltone brought a writ of dower against Alice wife that was of William Dauy, who demanded the view.

*Stonore.* You entered by our husband, wherefore etc.

*Denom.* Ready to aver [we did] not.

*Stonore.* To this averment you cannot get, for a fine was levied as to these same tenements between you and our husband when you made conusance that the tenements were the right of our husband as those etc. for which conusance our husband granted and rendered the tenements to you. Judgment etc. whether in spite of the fine.

*Denom.* You are a stranger to the fine.

Nevertheless she was ousted of the view by award.

*Denom.* Her husband was never seised of these tenements after the wedding. Ready.

*Stonore.* To this averment you shall not get against the fine and we will aver that we were his wife at that time.

And they were ousted of the averment by BEREฟอร์ด C.J.

*Denom.* Alice tells you that she holds these same tenements by the fine for term of life by the rendering of John of Tiltone and we tell you that John had in that county partible lands which descended to William and John his sons and we vouch the said William and John who are below age and in the wardship of Margery their mother who will be summoned in the same county. And in the right of (a) frank-fee which William has by descent in another county we vouch William alone who is in the wardship of the same Margery who will be summoned in the other county.

*Stonore.* You have answered to our action, and therefore you shall not get to the voucher.

*Scrope.* You would not accept our answer, but you drove us, and gave us the <sup>1</sup>legal ground,<sup>1</sup> to vouch, by the fine which you alleged.

And he was received to the voucher.

*Herle.* You vouch, by the fine, William and John, by reason of the reversion. But the reversion belongs, according to the fine, to William alone. Judgment of the voucher.

BEREฟอร์ด C.J. They vouch according to their case.

And he awarded the voucher good.

*Stonore.* We are that same Margery whom you suppose to be

<sup>1-1</sup> 'Materie.'



gardein et sumes prest a garaunter et rendoms dower a nous mesme com cele qe rien nad en garde.

*Scrop.* Ele ad assez en les ij countez prest etc.

*Alii econtra.*

### III.<sup>1</sup>

De Dote.

Margerie qe fut la femme Iohan de Tyltone porta son bref de doware vers Alice qe fut la femme W. Douy.

*Scrop.* Nous demandoms la vewe.

*Stoner.* La vewe ne deuet auer pur ceo qe vous entret mesme les tenemenz par nostre baroun.

*Scrop.* Nent par vostre baroun. einz par vn Roger de C. prest etc.

*Den.* Ala uerrement ne deuet ne deuet (*sic*) auenir. qar nostre baron de qi dowement nous demandoms par fin leue en la court le Rei vous rendi mesmes les tenemenz etc. iugement si en countre la fin a quei vous estis partie deuet a nul auerement auener.

E mist auant la fin qe testmoigneit etc.

*Scrop.* Celi qe me veut oster del auerement par reson de la fin il couent qil se face priue ala fin. mes ore est cele qe met auant cel r(espounce) demoy oster del auerement, tot estrange ala fin iugement si en la bouche de estrange etc.

*Denum vt prius.*

*Ber.* Dites outre.

*Et non habuit visum.*

*Scrop.* Sire Margerie ne peut action auer etc. qar .I. son baron de qi dowement etc. ne fut vnqes seisi de ceux tenemenz issint qe dower la pout prest etc.

*Herle.* Ala uerement nauendret pas qe eins ces houres .I. nostre baron porta vn bref de couenant vers vous mesmes deuant sire Rauf de Hengham et ces compaignons etc. teil iour etc. an etc. ou vous conistes les tenemenz dont nous demandoms la tierz partie estre le dreit .I. nostre baron. pur la quele conisance .I. granta e rendi mesmes les tenemenz a vous a auer e a tener a terme de vostre vie de .I. et de ces heirs et vetz cy la fin qe ceo testmoigne. e del heure qe vous mesmes en court qe porte record conis(tes) les tenemenz a nostre baron. e deluy mesme repristes estat iugement si encountre vostre conisaunce demeine deuet a nul auerement auener. E dautrepart si ele fut receu a tiel

<sup>1</sup> From *R.*

guardian and we are ready to warrant and we render dower to ourselves as one that has nothing in wardship.

*Scrope.* She has enough in the two counties. Ready etc.

Issue joined.

### III.

Dower.

Margery wife that was of John of Tiltone brought her writ of dower against Alice wife that was of W. Dauby.

*Scrope.* We demand the view.

*Stonore.* You ought not to have the view because you entered these same tenements by our husband.

*Scrope.* Not by your husband but by one Roger of C. Ready etc.

*Denom.* To the averment you cannot get, for our husband, by whose endowment we demand, rendered to you by fine levied in the King's Court these same tenements etc. Judgment whether in spite of the fine to which you are party you can get to any averment.

And he put forward the fine which witnessed etc.

*Scrope.* He who wants to oust me of the averment by reason of the fine, must make himself privy to the fine. Now however she that puts forward this answer in order to oust me of the averment is a complete stranger to the fine. Judgment whether in the mouth of a stranger etc.

*Denom* (as before).

BEREFORD C.J. Say something else.

And she did not have the view.

*Scrope.* Sir, Margery cannot have an action etc., for John her husband by whose endowment etc. was never seised of these tenements so that he could (not) have endowed her. Ready etc.

*Herle.* To the averment you shall not get, for before now John our husband brought a writ of covenant against you, before Sir Ralph of Hengham and his fellow-justices etc. on such day etc. (in such) year etc. when you made conusance that the tenements of which we demand the third part were the right of John our husband. For that conusance John granted and rendered the same tenements to you, to have and hold for the term of your life from John and from his heirs. And see here the fine which witnesses this. And since you yourself made conusance as to the tenements for our husband in a Court that is of record, and since from him, our husband, you then took your estate, judgment whether, against your own conusance, you can get to any averment. And moreover if she were received to such an averment



auerement cel auerrement sereit ala nientisement de la fin qe est vn record. le qel auerement si est tolet par statut *quia fines* iugement si en contre la fin etc.

*Toud. ad idem.* La fin testmoigne qe nostre baron fut seisi com de fee et de droit. dont nule chose ne put estre en debat qant ala seisine for soulement si ele fut seisi au temps de la conisaunce. e cel proue la fin et a mesme ceux temps nous sa femme aly acouple en lial matrim(oine) e ceo voloms auerer iugement.

*Scrop.* Nous ne pledoms rens ala fin einz al estat vostre baron qil ne fut vnqes seisi. issint qe dower etc.

*Herle.* La fin ala quele vous estes partie et priue testmoigne le contrarie.

*Scrop.* Le plus haut respounse qe hom peut doner atoler femme doware ala commune lay si est adire qe son baron ne fut onqes seisi issint qe dower la pout et cel latendoms e il ne mostre nul especialte deluy qe nous forclot(e) de cel auerement iugement etc.

*Inge.* Il mettent auant la fin qe proue tut le reuers de vostre dit la quele fin est vn record qe ne peut estre voide par auerement du pais par ceux qe sunt partiez ala fin en nule manere ne par nul autre etc.

*Pass.* Cesti qi porte le bref nest pas einz est tot estrange.

*Ber.* Il ysunt nul finz leuez en ceste court en tile forme saunz liuerer de seisine le queux ne seront iammes etc. voidez par les parties ne par les heirs par auerement du pays. e il vnt mis auant vne fin la quele fin vous auet grante et en contre vostre fet demesne le quel vous auet grante a nul auerement ne deuert auener etc. en ceo cas il tendont dauerer qe au temps de la conisaunce fete. Margerie fut la femme. I. e deuant la conisaunce et apres le qel auerement vous refusez par qei nous demandoms si vous voilet autre chose dire etc.

*Scrop.* Sire si vous veietz qil nous pusse oster de cel auerement qi est si general e si haut en ly mesme. par reson de cele fin par la demur(om)s nous en vos agard.

*Ber.* Vous nauendrez iammes al auerement en contre la fin.

Et peus *Herui* com(en)sa areherser le plai et voleit auer done le iugement etc.

that averment would go to the avoidance of the fine which is a record. And such an averment is taken away by the statute *Quia fines*. Judgment whether in spite of the fine etc.

*Toudeby* (to the same purpose). The fine witnesses that our husband was seised as of fee and of right. Hence nothing can be in dispute as to the seisin except only whether she was seised at the time of the consueance, and that is proved by the fine. And at that same time we were his wife coupled to him in lawful matrimony, and this we are willing to aver. Judgment.

*Scrope*. We do not plead at all to the fine but to the estate of your husband that he was never seised, so that (you ought not to have) dower.

*Herle*. The fine to which you are a party and privy witnesses the contrary.

*Scrope*. The highest answer that one can give to oust a woman of dower at common law, is to say that her husband was never seised so that he could not have endowed her, and such (an answer) we tender, and he shows no specialty that would foreclose us from this averment. Judgment etc.

*Inge*. They put forward the fine which proves quite the contrary of what you say. That fine is a record and as such cannot be avoided by averment of the country, either by those who are in any way parties to the fine, or by anyone else etc.

*Passeley*. (She) that brings the writ is not (a party to the fine) but is a complete stranger.

BEREFORD C.J. There are certain fines levied in this Court in such a form, without delivering the seisin, which will never be avoided by the parties (to them) or by the heirs, by averment of the country. And they have put forward a fine which you have granted, and against your own deed which you have granted you cannot get to any averment etc. In this case they offer to aver that at the time when the consueance was made, and also before the consueance and after it, Margery was the wife of John. You refuse that averment, therefore we ask whether you want to say something else.

*Scrope*. Sir, if you consider that he can oust us, by reason of this fine, from this averment which is in itself so wide and so high, then we await your award.

BEREFORD C.J. You shall never get to the averment against the fine.

And then STANTON J. began to rehearse the plea and would have given judgment etc.<sup>1</sup>

<sup>1</sup> This interesting incident is reported by *R* only.



*Scrop.* Sire nous dirroms autre chose qar nous vous dioms qe I. de T. morust seisi des tenemenz de quel le vns sont departables entre maleuz e les vns nemye etc. et dount nous uochoms a garrantie I. et W. par eide de ceste court fiz et heirs I. de Tiltone en dreit de ceux tenemenz qe sunt departables etc. e par reson dautres tenemenz qe ne sont mye departables. I. fiz et heir I. de Tiltone soul etc. le queux ten(emen)z sont en la garde Margerie lor mere par reson de norture la quele Margerie serra somonee en le conte de Notinch(am).

*Ston.* Vous auet respondu a nostre action iugement si vous pusset ore resorter auoucher.

*Herle ad idem.* Vous auet tendu vn auerrement le qel fut a nostre accion tot a trenche(e) pur touz iours par quei uous ne deuget ore autre issue auer pur agarrantie woucher.

*Denum.* Si ieo tend vn auerrement e lauerrement net pas receu dela partie e me se oste par la court e par la partie apres cele tendre etc. si serra ieo receu a vouchier.

*Wilb.* Apres mise de grante assise e bataille gage le tenant ne sera mie receu de vouchier agarrantie nen plus de ceste parte etc. del houre qe vous auet plede en chef. e rien a nostre accion vous ne deuget de plus haut a plus bas resorter.

*Scrop.* Ceo nest pas semblable. qar la mise de grante assise ne batale etc. ne serront iontz etc. si non par assent departies. mes ou nous sumes ore la uerrement ne fut pas receu de partie par quei etc. E dautrepart la forme de lur pled(er) me dona ceu vouchier qar il diunt qil granta e rendi mesme les tenemenz a terme de la vie Alice e la reuercion est a I. et a ces heirs e ceo proue la fin qil mettent auant par qei nous luy vochoms par reson de la reuercion iugement si nostre vouchier ne seit receuable.

E pus fut le vouchier receu par *Ber.*

E pus vint Margerie ala barre maintenant et rendist doware a sey mesme.

#### IV.<sup>1</sup>

Dower.

Margerie qe fu la femme Ion de Tiltone porta bref de dower vers Alice qe fu la feme W. Dauby.

*Scrop* demaunda la vew.

<sup>1</sup> From X (first version).

*Scrope.* Sir, we will say something else. For we tell you that John of Tiltone died seised of tenements of which some are partible between males and others are not etc. and now we vouch to warranty, by aid of this Court, John and William, sons and heirs of John of Tiltone, in the right of those tenements that are partible etc., and by reason of the other tenements that are not partible (we vouch) solely John, son and heir of John of Tiltone etc. Those tenements are in the wardship of Margery their mother, by reason of nurture. Margery will be summoned in the county of Nottingham.

*Stonore.* You have answered to our action. Judgment whether now you can resort to a voucher.

*Herle* (to the same purpose). You have tendered an averment which was quite in bar of our action for ever. Therefore you ought not to have now another issue in order to vouch to warranty.

*Denom.* If I tender an averment and the averment is not received by the party, and I am ousted by the Court and by the party after that tender etc., in that case I shall be received to vouch.

*Willoughby.* After mise on the grand assize and battle waged the tenant will not be received to vouch to warranty. In the same way he will not be received in this case etc. Since you have pleaded in the main and nothing to our action, you ought not to resort from a higher to a baser plea.

*Scrope.* That is not a similar case, for the mise on the grand assize, and also the battle etc., will not be joined etc. except by consent of the parties. But at this stage at which we are now the averment has not been received by the party, wherefore etc. And on the other hand the form of their pleading has given me this voucher, for they say that John granted and rendered these same tenements for the term of the life of Alice, and the reversion belongs to John and to his heirs, and that is proved by the fine which they put forward. Therefore we vouch him by reason of the reversion. Judgment whether our voucher is not receivable.

And afterwards the voucher was received by BEREFORD C.J.

And then Margery came presently to the bar and rendered dower to herself.

#### IV.

##### Dower.

Margery wife that was of John of Tiltone brought a writ of dower against Alice wife that was of W. Dauby.

*Scrope* demanded the view.



*Den.* Vous entrastes par I. nostre baroun par quei etc.

*Scrop.* Nous nentrames pas par I. enz par Roger de C. prest etc.

*Den.* A cel auerement nauendrez pas. qar vous mesmes conistes ces tenemenz estre le dreit I. etc. pur quel. etc I. granta et rendi a vous a terme de vie issint proue la fin vostre entre par I. iugement si etc.

Et fut oste de la vew.

*Scrop.* I. son baron ne fut vnqes seisi qe dower la pout prest etc.

*Den.* A ceo nauendrez pas contre la fine a quei vous futes partie qe proue sa seisine et a mesme le tens nous fumes sa feme cople ali en leal matrimone prest etc.

*Scrop.* Vous estes estrange a la fin et la fin ne proue pas qe vous futes sa femme.

*Ber.* Vous nauendrez iames al auerement contre la fin.

*Scrop.* Qant a tant purceo qe ceo est part(able) entre mals si vouchoms agarrantie I. et W. fiz et heirs I. de Tiltone et qant aremenant nous vouchoms I. soul pur ceo qe ceo nest pas part(able). les qels I. et W. sunt enla garde Margerie lur mere par resoun de nurture la quel M. sera som(onnee) etc.

*Den.* Vous auez respondu a nostre accion par quei etc.

*Scrop.* Nous tendimes auerement quel vous ne vodriez accepter et deistes qe nous ne dussoms auenir par quei la maner de vostre ple nous done altre response.

Et le voucher fu receu par *Ber.*

Et Margerie com gard(eyne) fu prest en curte et vint ala barre et garranti et rendi dower alim(eme).

*Et mirum fuit* qel fu receu a garr(anti) sanz fet mostrer par le t(ena)nt.

## V.<sup>1</sup>

Dowere. Recordum istius placiti patet supra in isto t(erm)i(n)o ad tale signum 0—||—0.<sup>2</sup>

En vn bref de Dowere.

*Scrop.* Le baroun fut vnqes seisi issint qe dower la pout prest etc.

*Herle.* Al auerement ne deuez auenir. qe einz ces oures deuant sire R. de Hengham certain iour etc. vous coniseites les tenemenz dount nous d(emaun)d(om)s la 3<sup>e</sup> partie estre le dreit nostre baroun pur la quele conis(aunce) nostre baroun rendi m(esme) les tenemenz a vous a

<sup>1</sup> From *P.*

<sup>2</sup> See below (VIII).

*Denom.* You entered by J(ohn) our husband, wherefore etc.

*Scrope.* We did not enter by J(ohn) but by Roger of C. Ready etc.

*Denom.* To that averment you shall not get, for you yourself made conusance that these tenements were the right of J(ohn) etc., after which etc. J(ohn) granted and rendered to you for term of life. Thus the fine proves your entry by J(ohn). Judgment whether etc.

And she was ousted of the view.

*Scrope.* J(ohn) her husband was never seised so that he could (not) have endowed her. Ready etc.

*Denom.* To that you cannot get against the fine to which you were a party and which proves his seisin. And at that same time we were his wife coupled to him in lawful matrimony. Ready etc.

*Scrope.* You are a stranger to the fine and the fine does not prove that you were his wife.

BEREFORD C.J. You shall never get to the averment against the fine.

*Scrope.* As to so much as is partible between males we vouch to warranty John and William sons and heirs of John of Tiltone, and as to the rest we vouch John alone because that is not partible. The said John and William are in the wardship of Margery their mother by reason of nurture, the which Margery shall be summoned etc.

*Denom.* You have answered to our action, wherefore etc.

*Scrope.* We tendered an averment which you would not accept, and you said that we ought not to get to it. Therefore the manner of your plea gives us a different answer.

And the voucher was received by BEREFORD C.J.

And Margery as guardian was ready in the Court, and came to the bar, and warranted, and rendered dower to herself.

And it seemed strange that she was received to warrant although the tenant had not shown a deed.

## V.

Dower. The record of this plea appears above in this term marked like this : 0—||—0.

In a writ of dower

*Scrope.* The husband was never seised so that he could (not have) endowed her. Ready etc.

*Herle.* To the averment you cannot get, for before now, before Sir Ralph of Hengham on a certain day etc. you made conusance that the tenements of which we (now) demand the third part were the right of our husband, for which conusance our husband rendered these same tenements to you to hold for term of your life, from him and



tenir terme de vostre vie de li et ses heirs. et dep(u)s qe vous repreites estat de ly iugement etc. estre ceo vous dioms qe a m(esme) le te(m)ps nous fum(us) sa femme acouple a ly en leal matrimoyne.

*Berr.* Plusours fins sount leues en ceste Court saunz liuere de seisine qe iammes serount voides par les parties ne lour heirs par auerement. et il tendent de auerer qe al te(m)ps de la Conis(aunce). deuaunt et apres ele fust sa femme. par qei vous nauerez pas lauere-ment qe vous tendez.

*Scrop* vocha etc.

*Ston.* Vous auez r(espondu) a nostre accion par qei vous ne deuez resortir de vocher.

*Herle ad idem.* Vous auez plede vn auerement qest tut at(re)nch(e) a nostre accion pur touz iours par qei vous nauendrez pas a altre issue.

*Denom.* Si si (*sic*) ieo tende vn auerement qest al accioun et lauere-ment nent r(ece)u de Court ne de partie. mes sei oste par la Court et par la partie, vnquore apres ieo serai r(ece)u de vocher.

*Wilby.* Apres mise, ou bataille gaie le tenant ne vochera pas. *ita hic.* qant vous auez plede en chef et r(espondu) a nostre accion. vous ne resort(ir)ez pas a plus bas.

*Scrop. Non est simile.* qar mise ne bataille ne serount pas ioint si noun par assent et mise de parties. mes lauere-ment qe nous tendim(e)s ne fut pas r(ece)u de Court ne de partie. estre ceo lour ple me doune le vocher qar il dient qe I. lour baroun rendi a nous a ten(ir) a terme de nostre vie. issint la fin proue la reuercion a li et ses heirs issint vochoms par reson de reuercion.

*Et stetit vocacio.*

## VI.<sup>1</sup>

Dower.

Margerie qe fu la feme Iohan de Tiltone porta vn bref de dower vers Alice qe fu la femme Willem Dauby et demaunda la terce partie des certeynz.<sup>2</sup>

Alice demanda la viue.

*Herle.* La viue ne deuetz auoir qe vous entrastes par nostre baron.

*Scrop.* Nous nentrames pas par vostre baron prest etc.

*Hedon.* A cel nauendretz pas. qe vostre baron coniseit mesmes les tenemenz estre le droit nostre baron com ceux etc. par quele reconi-

<sup>1</sup> From *E.*

<sup>2</sup> *Suppl.* tenemenz.

his heirs. And since you took (back) estate from him, judgment etc. Moreover we tell you that at that same time we were his wife coupled to him in lawful matrimony.

BEREFORD C.J. Fines are (often) levied in this court without livery of seisin, (and they) may never be avoided by the parties or by their heirs, by an averment. And they offer to aver that at the time of the conusance, before it and after it, she was his wife. Therefore you shall not have the averment which you tender.

*Scrope* vouched etc.

*Stonore*. You have answered to our action, wherefore you cannot resort to a voucher.

*Herle* (to the same purpose). You have pleaded (tendering) an averment which is quite in bar of our action for ever, wherefore you cannot get to another issue.

*Denom*. If I tender an averment which (relates) to the action, and the averment is not received by the Court or by the party, if (on the contrary) I am ousted by the Court and by the party, nevertheless afterwards I shall be received to vouch.

*Willoughby*. After the mise or battle waged the tenant shall not vouch. The same applies here. When you have pleaded in chief and answered to our action, you shall not resort to a baser (expedient).

*Scrope*. That is not an analogous case. For the mise or the battle shall not be joined except by assent and mise of the parties. The averment which we tendered, however, was not received by the Court or by the party. Moreover their plea gives us the voucher, for they say that John their husband rendered to us to hold for term of our life. Thus the fine proves the reversion to him and his heirs. So we vouch by reason of the reversion.

And the voucher stood.

## VI.

### Dower.

Margery who was the wife of John of Tiltone brought a writ of dower against Alice wife that was of William Dauby, and demanded the third part of certain tenements.

Alice demanded the view.

*Herle*. You ought not to have the view, for you entered by our husband.

*Scrope*. We did not enter by your husband. Ready etc.

*Hedon*. To that you cannot get because your husband made conusance that these same tenements were the right of our husband as those etc., and for that conusance our husband granted and rendered



saunce il granta et rendist mesmes les tenemenz a vostre baron et a vous et veetz si fin que cel tesmoigne iugement si a nul auerrement countre la fyn deuetz auenir.

*Scrop.* Vous estes tot(e) estrange a la fyn par qey il ne gist neient en vostre bouche de ceo allegger. iugement.

*Herle.* La ou la Court poet estre asserte saunz enqest nest pas mester de prendre enqest ore la fyn. que est chose de record. tesmoigne qil entra par nostre baron et dauerrer quele nentra neient par nostre baron cel sereit de voider la fin. que ne poet estre suffert et demandoms iugement si etc.

Et lauerrement ne fu pas receu.

*Scrop.* Son baron de qy dowement ele demande ne fu pas seisi des tenemenz en demande le iour de les esposailles ne vnke pus si que dower la pout prest etc.

*Herle.* A cel nauendrez mye que veetz si la fin que tesmoigne sa seisine par quele fin le dreit fu conue en sa persone come ceux qil auoit de son doun et nous voloms auerrer que al tenps qant la fin se leua. quele fu sa femme iugement si a tel auerement deuetz auenir.

*Tou.* *ad idem.*<sup>1</sup> La seisine est conue de vne part et daltre. dount sur la seisine nestut il ia de prendre auerrement mes soulement sur le tenps le quel ele fu sa femme al tenps qant la fin se leua ou noun et tend(oms) dauerer que a tel tenps ele fust sa femme iugement.

*Scrop.* Si vous nous voletz oster del auerrement que done nous est de ley de tere par chose que chet en record. il couent que le record seit contraire al auerrement que nous tendoms. ore la fin ne tesmoigne forqe soulment vne seisine. que poeit estre auaunt les esposailles la quele seisine ne donne pas accioun a la femme a demander dower et tend(oms) dauerrer que vnke seisi pus les esposailles saunz quele seisine ele ne poet auoir accioun le quel auerrement nest pas contraire a la fin et demand(oms) iugement.

*Ing'.* Dauerrer par pais si le baron fu seisi ou nemye ne estut il ia que la fin la tesmoigne dount ny ad il nul debat. for que del tenps. le quel ele fu sa femme qant il fu seisi par la fyn ou noun.

*Ber.* En commune cas. nul hom vous ostreit de cest auerrement mes cest vn especial cas. ou il mustre auaunt fyn que tesmoigne la seisine son baron et si vous fussetz receu a tel auerrement vous anentrez la fyn par quel lauerrement que vous tendez nest pas reseuable et il vous

<sup>1</sup> Interlined.

these same tenements to your husband and to you. And see here a fine which witnesses this. Judgment whether you can get, against the fine, to any averment.

*Scrope.* You are a complete stranger to the fine. Therefore it <sup>1</sup>is not for you<sup>1</sup> to allege this. Judgment.

*Herle.* Where the Court can be certified without inquest, there it is not necessary to take the inquest. Now the fine which is matter of record witnesses that he entered by our husband, and to aver that he did not enter by our husband would be to avoid the fine. That, however, cannot be permitted, and we demand judgment whether etc.

And the averment was not received.

*Scrope.* Her husband by whose endowment she demands was not seised of the tenements in demand on the day of the wedding, or ever afterwards, so that he could (not) have endowed her. Ready etc.

*Herle.* To that you cannot get, for see here the fine which witnesses his seisin. By this fine conusance was made that the right was in his person as he had the tenements by her gift, and we will aver that at the time when the fine was levied she was his wife. Judgment whether you can get to such an averment.

*Toudeby* (to the same purpose). The seisin is recognised by either side; therefore no averment should now be taken as to the seisin, but only as to the time, to wit, whether she was his wife at the time when the fine was levied, or not. And we offer to aver that at that time she was his wife. Judgment.

*Scrope.* If you want to oust us, by something that is of record, of the averment which is given us by the law of the land, then the record ought to be in discord with the averment which we tender. Now the fine witnesses nothing except only a seisin, which may have been before the wedding, and such seisin would not give to the woman an action to demand dower. And we offer to aver that (John was) never seised since the wedding, failing which seisin she cannot have an action. And that averment is not in discord with the fine. And we demand judgment.

*Ingham.* It is not permissible to aver by the country whether the husband was seised or not, now that the fine witnesses it. Therefore there is no dispute except only as to the time, to wit, whether or no she was his wife when he was seised by the fine.

BEREFORD C.J. In an ordinary case no one would oust you of this averment. But this is a special case, in which she puts forward a fine which witnesses the seisin of her husband, and if you were received to such an averment you would avoid the fine. Therefore the averment which you tender is not receivable, and he tenders

<sup>1-1</sup> Or: does not sound right in your mouth.



tend dauerrer qe al tenps de la fyn leue qele fu sa femme par quey voletz lauerrement.

Et al dareyn il weyuerent le vn auerrement et laltre et vouchèrent a garrantie et le vouchier estut.

Et si aueynt il plede al action auaunt.

## VII.<sup>1</sup>

Marior(i)e qe fut la femme Iohan de Tiltone porta son bref de Dowere vers Alice qe fut la femme William Dauy.

*Pass.* Nous demaundoms la vewe.

*Denom.* Vous naueret pas. qar vous entrastes par nostre baroun.

*Pass.* Lestat qe nous auoms si est par vn Roger pret etc.

*Denom.* A ceo nauendrez pas qe veez cy vn fyn qe testmoigne qe vous entrastes par nostre baron a qi vous mesme fustes partie.

Et mist auant vne fyne qe voleit qe Alice conust lez tenemenz estre le dreit Iohan com ceo qe Iohan auoit de soun doun Et pur ceste reconisaunce Iohan grante mesmes lez tenemenz et rendi a Alice a tote sa vie et apres sa mort qil dussent reuertir a Iohan etc.

Et fust en<sup>2</sup> ouste de la vewe.

*Scrop.* Soun baroun ne fust seisi iour qil lesposa ne vnqes pus pret etc.

*Denom.* Vous nauendrez mie qe veetz cy la fyn qe testmoigne qe vous mesmes conustes lez tenemenz estre le dreit Iohan nostre baron com ceo qil auoit de vostre doun et pur cel reconisaunce il rendi mesme lez tenemenz a vous et si vous seietz receu a cel auerement vous voidreit la fyn qest de record iugement etc.

*Scrop.* Vous dites talent tust testmoigne la fyne la seisine vostre baroun. ele ne testmoigne pas lez esposailles qe put estre qe la fyn se leua auant.

*Denom.* Vous ne poez dedire la fyn a qi vous mesme fustes partie qe testmoigne la seisine nostre baron par quoi nous sumes assetz a vn qe nostre baron fust seisi. dont nauoms plus a prouer forsqe nous fumes sa femme a cel temps. e nous voloms auer qe al temps qe la fyn se leua. et vi anz auant la fyn. prest etc.

*Pass.* Vnqes seisi pus les esposailles prest etc.

<sup>1</sup> From *T.*    <sup>2</sup> *Follows* plea cancelled. It is possible, therefore, that this *en* ought to have been cancelled too.

you the averment that at the time when the fine was levied she was his wife. Therefore, do you want the averment ?

And ultimately they waived one averment and the other, and they vouched to warranty. And the voucher stood.

And thus it happened that he had pleaded to the action before the voucher.

## VII.

Margery wife that was of John of Tiltone brought her writ of dower against Alice wife that was of William Dauby.

*Passeley.* We demand the view.

*Denom.* You shall not have it. For you entered by our husband.

*Passeley.* The estate which we have is by one Roger. Ready etc.

*Denom.* To that you cannot get, for see here a fine to which you yourself were a party and which witnesses that you entered by our husband.

And he put forward a fine which was to the effect that Alice made consuance that the tenements were the right of John as those which John had of her gift, and for that consuance John granted and rendered the said tenements to Alice for her whole life, and that after her death they should revert to John etc.

And he was ousted of the view.

*Scrope.* Her husband was not seised on the day on which he married her, nor ever since. Ready etc.

*Denom.* (To that) you cannot get, for see here the fine which witnesses that you yourself made consuance that the tenements were the right of John our husband as those which he had of your gift, and for that consuance he rendered these same tenements to you. And if you were received to that averment you would avoid the fine which is of record. Judgment etc.

*Scrope.* You talk at random. Albeit that the fine witnesses to the seisin of your husband, it does not witness to the wedding, for it may be that the fine was levied before.

*Denom.* You cannot deny the fine to which you yourself were a party, and which witnesses the seisin of our husband. Therefore we are sufficiently at one that our husband was seised. Thus we have to prove nothing more except that we were his wife at that time. And we will aver that at the time when the fine was levied, and six years before the fine (we were his wife). Ready etc.

*Passeley.* (He was) never seised since the wedding. Ready etc.



*Denom.* Si vous vssetz ore conu en court la seisine nostre baroun. asset nous suffreit dauerer qe a cel temps sa femme mais ore la fyn qest de recorde a qi vous mesme fust partie qe testmoigne la seisine nostre baroun. et voloms auerrer qe a cel temps sa femme et auant etc.

*Berr.* La fyn est de recorde qe testmoigne la seisine le baroun dount nous nauoms plus denquerer si noun qele fut sa femme *tempore quo finis* etc.

*Ideo xii* etc.

### VIII.<sup>1</sup>

Dowere.

Recordum cuiusdam placiti sequens.

Margeria que fuit<sup>2</sup> Iohannis de Tiltone per Iohannem Schoke<sup>3</sup> attornatum suum petit uersus Aliciam que fuit vxor Willelmi Dauy de Keythorp(e) terciam partem vnus mesuagii. duarum carucatarum terre et xx<sup>ti</sup> solidatarum redditus cum pertinenciis exceptis sex acris<sup>4</sup> in Keytorp(e) vt dotem<sup>5</sup> etc.

Et Alicia per Rogerum de Crextone<sup>6</sup> attornatum suum venit et dicit quod predicta Margeria non debet in(de) dotem habere quia dicit quod predictus Iohannes quondam vir etc. die quo ipsam disposauit nec vnquam postea fuit seisitus de predictis tene(mentis) ut de feodo ita quod ipsam inde dotare potuit et hoc parata est verificare per patriam etc.

Et Margeria dicit quod predicta Alicia ad verificacionem istam admitti non debet quia dicit quod alias in Curia Regis<sup>7</sup> hic scilicet in octabis sancti Martini anno Regni regis Edwardi patris domini Regis nunc xxxiii coram Radulfo de Heng(ham) et sociis suis Iusticiariis ipsius Regis Edwardi leuauit quidam finis inter ipsam Aliciam querentem et predictum Iohannem ex cuius dotacione etc. defore(iantem) de tene(mentis) predictis cum<sup>7</sup> pertinenciis<sup>7</sup> vnde placitum conuencionis sum(monitum) fuit inter eos etc. scilicet quod predicta Alicia recongnouit<sup>8</sup> predicta tenementa cum pertinenciis esse ius ipsius Iohannis Et pro recognicione<sup>9</sup> etc. idem Iohannes concessit predicte Alicie predicta tenementa cum pertinenciis et illa ei reddidit habenda etc. eidem Alicie de predicto Iohanne et heredibus suis tota vita ipsius Alicie et post decessum ipsius Alicie predicta tenementa cum pertinenciis integre

<sup>1</sup> From P. Compared with the record on the roll.    <sup>2</sup> Add: vxor Rec.    <sup>3</sup> de Stone Rec.

<sup>4</sup> Add: terre Rec.

<sup>5</sup> Add: ex dotacione predicti Iohannis

quondam viri Rec.

<sup>6</sup> Croxtone Rec.

<sup>7</sup> Om. Rec.

<sup>8</sup> recognouit Rec.

<sup>9</sup> hac Rec.

*Denom.* If you had now made in the Court conusance of our husband's seisin, it would have been enough for us to aver that at that time we were his wife, but now the fine is of record and you were a party to it and it witnesses the seisin of our husband. And we will aver that we were his wife at that time and before etc.

BEREFORD C.J. The fine is of record and witnesses to the seisin of the husband. Therefore we have to inquire of no more except whether she was his wife at the time when the fine etc.

Therefore twelve etc.

### VIII.

#### Dower.

The following Record of a certain plea.

Margery wife that was of John of Tiltone by John of Stone her attorney demands against Alice wife that was of William Dauby of Keythorpe the third part of one messuage, two carucates of land, and twenty shillings' worth of rent with the appurtenances excepting six acres in Keythorpe as her dower etc.

And Alice by Roger of Croxton her attorney comes and says that the aforesaid Margery ought not to have dower therefrom, for she says that the aforesaid John sometime her husband etc. neither on the day on which he married her nor ever afterwards was seised of the aforesaid tenements as of fee so that he could have endowed her therefrom. And this she is ready to aver by the country etc.

And Margery says that the aforesaid Alice ought not to be admitted to that averment, for she says that aforetime in the King's Court here, to wit on the octaves of Martinmas in the thirty-third year of the reign of King Edward father of the present King, before Ralph of Hengham and his companions justices of the said King Edward, a fine was levied between the same Alice, plaintiff, and the said John by whose endowment etc., deforciant, as to the aforesaid tenements with the appurtenances, as to which a plea of covenant had been summoned between them. (The fine was to the effect that) the said Alice made conusance that the aforesaid tenements with the appurtenances were the right of the said John, and for the conusance etc. the same John granted to the said Alice the aforesaid tenements with the appurtenances and rendered them to her to have etc. to the same Alice of the aforesaid John and his heirs for the whole life of the said Alice, and after the death of the said Alice the aforesaid tenements with the appurtenances were to



reuertentur<sup>1</sup> ad predictum Iohannem et heredes suos quiete de heredibus ipsius Alicie etc. Et profert quandam partem predictae<sup>2</sup> finis que hoc idem testatur etc. Et ex quo eadem Alicia que fuit pars predictae<sup>2</sup> finis manifeste cognouit<sup>3</sup> predictum Iohannem tempore illo esse s(ei)seitum de predictis tenementis<sup>4</sup> etc. et<sup>4</sup> per cuius red-dicionem eadem Alicia ad presens seiseita est de<sup>5</sup> tenemento illo<sup>5</sup> vnde etc. tenendis ad totam vitam ipsius Alicie. Et eadem Margeria tempore predicti finis<sup>6</sup> fuit vxor predicti Iohannis et ei legitimo matrimonio copulata prout eadem Margeria parata est verificare. si etc. petit iudicium si predicta Alicia contra cognicionem suam propriam ad verificacionem predictam admitti debeat maxime cum hoc esset ad predictum finem vacue(n)dum<sup>7</sup> et ad nullandum etc.

Et Alicia dicit quod verificacio quam ipsa pretendit datur ex lege communi ad predictam Margeriam de dote sue recuperanda exclu-dendam etc nec eadem Margeria aliquod factum speciale inter ipsas Margeriam et Aliciam ostendit quod est contrarium verificacioni sue predictae. nisi tantum partem predicti finis ad quem eadem Margeria nec aliquis antecessor suus fuit pars etc. petit iudicium si predicta Margeria per predictum finem subueniri debeat quin ipsa Alicia ad tam generalem verificacionem admitti debeat etc.

vocher.  
nota<sup>8</sup>

Postea predicta Alicia bene concedit quod ipsa tene(t) predicta tenementa vnde etc. ad terminum vite sue per formam predicti finis etc. Et dicit quod omnia tenementa de quibus Iohannes de Tiltone quondam vir etc. obiit seisitus ten(en)t(ur) in sokagium vnde quedam sunt partibilia inter heredes masculos et quedam non. Et racione tenementorum partibilium etc. vocat ad war(antum) in forma predicta Iohannem et Willelmum filios et heredes predicti Iohannis de Tiltone. Et racione tenementorum non partibilium etc. vocat ad war(antum) Iohannem filium et heredem predicti Iohannis de Tiltone solum etc. qui quidem Iohannes et Willelmus sunt infra etatem et in custodia predictae Margerie Matris sue racione nutriture etc. que quidem custos summoneri debet in Comitatu predicto et in Comitatu Not. etc.

Et super hoc eadem Margeria presens in Curia etc. nomine heredis warent(izat) etc. et reddidit<sup>9</sup> sibi ipsi dotem suam etc. Ideo ipsa habuit<sup>10</sup> inde seisinam etc.

Sed predicta Margeria dicit quod ipsa nichil tene(t) in custodia sua de hereditate predictorum heredum et hoc pretendit verificare etc.

<sup>1</sup> reuenterentur *Rec.*      <sup>2</sup> predicti *Rec.*      <sup>3</sup> cognouit *Rec.*      <sup>4-4</sup> *Om. Rec.*  
<sup>5-5</sup> tenementis illis *Rec.*      <sup>6</sup> *Add: leuati Rec.*      <sup>7</sup> euacuandum *Rec.*      <sup>8-8</sup> *Om.*  
*Rec.*      <sup>9</sup> reddit *Rec.*      <sup>10</sup> habeat *Rec.*

revert in their entirety to the aforesaid John and his heirs quit of the heirs of the said Alice etc. And she put forward a part of the aforesaid fine which witnesses the same thing etc. And since the said Alice who was a party to the said fine manifestly made conusance that the aforesaid John at that time was seised of the said tenements etc., and by his rendering the said Alice is at present seised of that tenement whereof etc. to hold for the whole life of the said Alice; and since the said Margery at the time of the aforesaid fine was the wife of the said John and joined to him in lawful matrimony as the said Margery is ready to aver if etc., she prays judgment whether the aforesaid Alice contrary to her own conusance ought to be admitted to the aforesaid averment, especially as this would go to the avoidance and annulment of the aforesaid fine.

And Alice says that the averment which she tenders is given by the common law to exclude the aforesaid Margery from recovering her dower, and that the said Margery has not shown any special deed between them the said Margery and Alice that (would be) contrary to her aforesaid averment, except only a part of the said fine to which neither the said Margery nor any ancestor of hers was a party etc. She demands judgment whether the aforesaid Margery ought to be helped by the aforesaid fine so that the said Alice should not be admitted to such a general averment etc.

Afterwards the said Alice quite admits that she holds the said tenements whereof etc. for the term of her life by the form of the said fine etc. And she says that all the tenements of which John of Tiltone sometime the husband etc. died seised, are held in socage, (and of their number) some are partible among heirs male and some are not. And by reason of the tenements that are partible etc. she vouches to warranty in the aforesaid form John and William the sons and heirs of the aforesaid John of Tiltone. And by reason of the tenements that are not partible etc. she vouches to warranty solely John the son and heir of the said John of Tiltone etc., the which John and William are under age and in the wardship of the aforesaid Margery their mother by reason of nurture etc., the which guardian ought to be summoned in the aforesaid county and in the county of Nottingham etc.

Voucher.  
Note.

And thereupon the said Margery present in Court etc. in the name of the heir warrants etc. and render(s) to herself her dower etc. Therefore she had seisin thereof etc.

But the aforesaid Margery says that she holds nothing in her wardship, of the heritage of the aforesaid heirs. And this she offers to aver etc.



Et Alicia dicit quod predicta Margeria tenet in custodia sua de hereditate predictorum heredum terras et tenementa apud Tiltone et Meltone Mounbray<sup>1</sup> in Comitatu predicto et apud Cuthorp<sup>2</sup> in Comitatu Not. etc. Et habuit<sup>3</sup> die sancti Michaelis in iii. septimanis anno Regni Regis nunc sexto qu(oniam) ipsa Alicia voc(auerat) <sup>4</sup>predictos heredes<sup>4</sup> in custodia predictae Margerie ad warr(antum) etc. Et hoc pretendit verificare etc. Vnde petit quod ipsa Alicia teneat in pace. et quod predicta Margeria habeat de terra <sup>4</sup>predictorum heredum<sup>4</sup> in custodia<sup>5</sup> etc.

Et Margeria dicit quod ipsa nichil tenet in custodia sua de terra predicti heredis seu heredum etc. nec tenuit predictis die et Anno nomine custodie seu nutriture sicut predicta Alicia dicit. Et de hoc ponit se super patriam.

Et predicta Alicia similiter.

Ideo preceptum est vicecomiti<sup>6</sup> Not. quod<sup>7</sup> venire faciat hic in octabis sancti sancti<sup>8</sup> Hillarii<sup>9</sup> xii etc. ad recognoscendum etc. quia tam etc.

Rotulo ci.<sup>10</sup>

Sed exspectetur de iurata in predicto Comitatu Leic. capienda quousque iurata inde inter eos transierit in predicto Comitatu Not. de visneto predicto.

<sup>11</sup>Iurata inter Aliciam que fuit vxor Willelmi Dauy de Keythorp ten(entem) et Margeriam que fuit vxor Iohannis de Tiltone custodem corporum et terrarum Iohannis et Willelmi filiorum et heredum predicti Iohannis de Tiltone quos predicta Alicia voc(auit) ad war(ranciam) et que ei nomine predictorum heredum warr(antizauit) terciam partem vnus mesuagii duarum carucatarum terre et viginti solidatarum redditus cum pertinenciis exceptis sex acris terre in Keythorp in Comitatu Leic. quam predicta Margeria in curia Regis hic clamat in dotem etc. ponitur in respectu vsque ad (*sic*) die pasche in xv dies pro defectu iuratorum quia nullus venit. Ideo vicecomes habeat corpora etc. idem dies datus est <sup>12</sup>Marg(eria) petit<sup>12</sup> per Iohannem de Stoke attornatum suum in banco.

Et idem dies datus est partibus predictis quo ad iuratam in Comitatu Leic.

Et preceptum est vicecomiti Not. quod appon(at) tot et tales etc.<sup>11</sup>  
Rotulo xi.

<sup>1</sup> Monbray *Rec.*    <sup>2</sup> Outhcrp *Rec.*    <sup>3</sup> *Add: a Rec.*    <sup>4-4</sup> *Sing. Rec.*    <sup>5</sup> *Add: sua Rec.*    <sup>6</sup> *Add: tam vicecomiti Leyc. quam vicecomiti Rec.*    <sup>7</sup> *Add: vterque eorum Rec.*    <sup>8</sup> *Om. Rec.*    <sup>9</sup> *Add: prece petentis Rec.*    <sup>10</sup> See below, Note (I) from the Record.    <sup>11-11</sup> This part is on the roll for Hilary term (De Banco Roll 196, membr. 11 recto, written by Poyntone).  
<sup>12-12</sup> *predictae Margerie petenti Rec.*

And Alice says that the aforesaid Margery holds in her wardship, of the heritage of the aforesaid heirs, lands and tenements at Tiltone and Melton Mowbray in the aforesaid county, and at Owthorpe in the county of Nottingham etc. And she had her day in three weeks from Michaelmas in the sixth year of the present King, because the said Alice had vouched to warranty the aforesaid heirs in the wardship of the aforesaid Margery etc. And this she offers to aver etc. Wherefore she asks that she, the said Alice, hold in peace, and that the aforesaid Margery have (her dower) of the land of the aforesaid heirs in the wardship etc.

And Margery says that she holds in her wardship nothing of the land of the aforesaid heir or heirs etc., nor did she hold on the aforesaid day and in the aforesaid year (anything of that land) in the name of wardship or nurture, as the aforesaid Alice says. And of this she puts herself upon the country.

And the aforesaid Alice does the like.

Therefore the Sheriff of Nottingham was ordered that he cause to come here on the octave of St. Hilary twelve etc. to find etc. because etc.

On Roll 101.

But let the jury which should be taken in the aforesaid county of Leicester be delayed until a jury shall have intervened between them in the aforesaid county of Nottingham of the aforesaid venue.

The jury between Alice wife that was of William Dauby of Keythorpe, tenant, and Margery wife that was of John of Tiltone, guardian of the bodies and the lands of John and William the sons and heirs of the aforesaid John of Tiltone, whom the aforesaid Alice has vouched to warranty and who in the name of the aforesaid heirs warranted to her one third part of one messuage, two carucates of land, and twenty shillings' worth of rent with the appurtenances excepting six acres of land in Keythorpe in the county of Leicester, the which third part the aforesaid Margery claims in the King's Court here in dower etc., is put in respite until the quindene of Easter, for default of the jurors because none came. Therefore let the Sheriff have the bodies etc. The same day was given to Margery the claimant by John of Stone her attorney in the bench.

And the same day was given to the aforesaid parties as to the jury in the county of Leicester.

And the Sheriff of Nottingham was ordered that he should bring so many and such etc.

On Roll 11.



## Notes from the Record.

## I.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 101 recto. Leicestershire.  
Written by Hillar'.

The record agrees (with the differences marked in footnotes and a few other minor differences) with the transcript in VIII (above, pp. 21-3), until the issue is joined and the sheriff is ordered to send jurors (above p. 23 note 11-11). Then the record proceeds :

Postea continuato inde processu vsque a die Pasche in xv dies extunc proximo sequente venerunt partes predictae per attornatos suos et similiter Iuratores de Comitatu Not(tingham) de consensu parcium electi, qui dicunt super sacramentum suum quod predicta Margeria nichil tenet in custodia sua de hereditate predicta in predicta villa de Outhorpe seu alibi nec tenuit die et anno supradictis sicut predicta Alicia dicit.

Ideo fiat executio etc. Et consideratum est quod si predicta Margeria habeat terras et tenementa in custodia sua in predictis villis in comitatu leycestrie de hereditate predicta : vnde facere possit sibi ipsi sufficienter ad valenciam etc : tunc predicta Alicia teneat in pace etc. Et ipsa Margeria habeat de terra heredum in custodia sua ad valenciam etc. sin autem : eadem Margeria habeat seisinam suam de predicta tertia parte uersus predictam Aliciam petita Et eadem Alicia de terra predicti heredis ad valenciam cum etc. Et Alicia in misericordia.

## II.

Feet of Fines, Case 123, file 44, no. 331. Leicestershire.

Hec est finalis concordia facta in Curia domini Regis apud Westmonasterium in Octabis sancti Martini Anno Regni Regis Edwardi filij Regis Henrici Tricesimo tercio. Coram Radulpho de Hengham. Willelmo de Bereford. Elia de Bekingham. Petro Malorre. Willelmo Howard et Lamberto de Trikyngham. Iusticiarijs et alijs domini Regis fidelibus tunc ibi presentibus. Inter Aliciam que fuit vxor Willelmi Dauy de Keythorpe querentem et Iohannem de Tiltone deforciantem de vno mesuagio, duabus Carucatis terre et viginti solidatis redditus cum pertinencijs exceptis sex acris terre in Keythorpe. vnde placitum conuencionis summonitum fuit inter eos in eadem Curia. Scilicet quod predicta Alicia recognouit predicta tenementa cum pertinencijs esse Ius ipsius Iohannis. Et pro hac recognicione fine et concordia idem Iohannes concessit predictae Alicie predicta tenementa cum pertinencijs. Et illa ei reddidit in eadem Curia. Habenda et tenenda eidem Alicie de predicto Iohanne et heredibus suis tota vita ipsius Alicie. Reddendo inde per annum vnam Rosam ad festum Natiuitatis sancti Iohannis Baptiste pro omni seruicio consuetudine et exaccione ad predictum Iohannem et heredes suos pertinente. Et faciendo inde Capitalibus dominis feodi illius pro predicto Iohanne et heredibus suis omnia alia seruicia que ad illa tenementa pertinent. Et predictus Iohannes et heredes sui warrant(izabunt) eidem Alicie predicta tenementa cum pertinencijs per predicta seruicia contra omnes

## Notes from the Record.

## I.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 101 recto. Leicestershire.  
Written by Hillary.

See the beginning of this note on the opposite page. The translation of the continuation is as follows :

Afterwards, the process in this matter having been continued until the quindene of Easter then next following, there came the aforesaid parties by their attornies and likewise the jurors from the county of Nottingham, chosen by the consent of the parties ; and they say upon their oath that the aforesaid Margery holds nothing in her wardship of the said heritage, either in the said vill of Owthorpe or elsewhere, nor did she hold on the aforesaid day and (in the aforesaid) year, as is alleged by the said Alice.

Therefore let execution be done. And it was considered that if the said Margery have in her wardship lands and tenements in the said vills in the county of Leicester of the said heritage, whereof she could satisfy herself sufficiently to the value etc., then the said Alice shall hold in peace, and the said Margery shall have of the land of the heirs in her wardship to the value etc. ; and if not, then the said Margery shall have her seisin of the said third part demanded against the said Alice ; and the same Alice shall have of the land of the said heir to the value when etc. And Alice in mercy.

## II.

Feet of Fines, Case 123, file 44, no. 331. Leicestershire.

This is the final concord made in the Court of our Lord the King at Westminster on the octave of Martinmas, in the thirty-third year of the reign of King Edward the son of King Henry, before Ralph of Hengham, William of Bereford, Elias of Bekingham, Peter Malorre, William Howard and Lambert of Trikyngham, Justices and other faithful subjects of our Lord the King, then there present, between Alice, widow of William Dauby of Keythorpe, complainant, and John of Tiltone, deforciant, as to one messuage, two carucates of land and twenty shillings' worth of rent with the appurtenances, excepting six acres of land, in Keythorpe, as to which a plea of covenant had been summoned between them in the same Court : to wit, that the said Alice made conusance that the said tenements with the appurtenances are the right of the said John, and for this conusance, fine, and concord the said John granted to the said Alice the said tenements with the appurtenances, and rendered them to her in the said Court, to have and hold to her the said Alice from him the said John and his heirs for the whole life of the said Alice, rendering therefor each year one rose at the feast of the Nativity of St. John the Baptist for all the service, custom and exaction belonging to the said John and his heirs—and doing thereof to the chief lords of that fee for the said John and his heirs all the other services which belong to those tenements. And the said John and his heirs will warrant to the said Alice the said tenements with the appurtenances, for the said



**Notes from the Record**—*continued*.

homines tota vita ipsius Alicie. Et post decessum ipsius Alicie predicta tenementa cum pertinenciis integre reuertentur ad predictum Iohannem et heredes suos, quiete de heredibus ipsius Alicie. Tenenda de Capitalibus dominis feodi illius per seruicia que ad illa tenementa pertinent imperpetuum.

5. LE POWER *v.* THE DEAN AND CHAPTER OF  
ST. ETHELBERT'S, HEREFORD.<sup>1</sup>

I.<sup>2</sup>

<sup>3</sup>Douwere recouery uers cely qe fut tenant par lestatut Marchand. Et coe lui serroit allowe a soun acompte.<sup>3</sup>

Vne feme recouerist dowere vers cely qe feut tenant par vertue de statut Marchant<sup>4</sup> pur ceo qil auoit prie eide de cely en qi persone le droit dem(ur)t et<sup>5</sup> ne vint pas et il ne pout la demande dedire etc. par qei il pria qe le iugement se freit qil tensist les ij parties outre tanqe la dette feut leue.

*Heruy.* Tiel iugement serroit hors de nostre garr(ant) qe nous nauoms garr(ant) forsqe de la terce partie<sup>6</sup> nepurqant<sup>7</sup> qant vous vendrez alacounte<sup>8</sup> ceo vous serra allowe etc.<sup>9</sup>

II.<sup>10</sup>

Dower vers tenaunt par statut marchaunt.

Bref de Dower fust porte vers tenaunt par Statut marchaunt qe pria en eide cely a qi la reuersioun fust qe fust somone et ne vynt pas par qey le tenaunt par statut respondist soul et dit qil ne pout dedire et pria par Iugement de tenir les ij parties taunt qe la dette fust leue.

*Heruy.* Nous nauoms pas gar(ant) a doner Iugement de ij parties mes sur lacounte vous sera allowe.

**Note from the Record.**

De Banco Roll 195a, Mich. 6 Edw. II., membr. 235 recto. Herefordshire.  
Written by Luding'.

Alianora que fuit vxor Hugonis le Power per attornatum suum petit uersus Decanum et capitulum ecclesie sancti Ethelberti Hereford' terciam partem

<sup>1</sup> Reported by *B, F, M, X*. This is Vulg. 15. <sup>2</sup> From *M*. Compared with *B, F*. Headnote from *B*. <sup>3-3</sup> The headnote in *F* runs: Dowere ou la femme rescouerist vers le tenant par statut de marchaunz. <sup>4</sup> de Marchaunds *F*. <sup>5</sup> qe *F*. <sup>6</sup> *Add*: et plus nest en debat etc. *F*. <sup>7</sup> Mes *F*. <sup>8</sup> sur la estente *F*. <sup>9</sup> *Add*: par quei et cetera *F*. <sup>10</sup> From *X*.

**Notes from the Record—continued**

services, against all men, during the whole life of the said Alice. And after the decease of the said Alice the said tenements with the appurtenances shall entirely revert to the said John and his heirs, quit of the heirs of the said Alice, to be held from the chief lords of that fee for ever by the services which belong to those tenements.

5. LE POWER *v.* THE DEAN AND CHAPTER OF  
ST. ETHELBERT'S, HEREFORD.

**I.**

Dower recovered against one that was tenant by the statute merchant ; and this would be allowed to him upon his account.

A woman recovered dower against one that was tenant by virtue of the statute merchant because he had prayed aid of one in whose person the right resided and he (the prayee) did not come and the tenant could not deny the demand etc. He therefore asked that judgment be made that he should hold further the two parts until the debt had been levied.

STANTON J. Such a judgment would be beyond our warrant, for we have no warrant except as to the third part. Nevertheless when you come to the account that will be allowed to you etc.

**II.**

Dower against a tenant by statute merchant.

A writ of dower was brought against a tenant by statute merchant who prayed aid of him to whom the reversion belonged. The reversioner was summoned and did not come, therefore the tenant by statute answered alone and said that he could not deny. And he prayed (to be allowed) by judgment to hold the two parts until the debt had been levied.

STANTON J. We have no warrant to give judgment as to the two parts, but upon account (that) will be allowed.

**Note from the Record.**

De Banco Roll 195a, Mich. 6 Edw. II., membr. 235 recto. Herefordshire.  
Written by Luding'.

Eleanor widow of Hugh le Power by her attorney demands against the Dean and Chapter of the church of St. Ethelbert, Hereford, a third part



**Note from the Record—continued.**

vnius mesuagii sexaginta et duodecim acrarum terre cum pertinenciis in Markeleye vt dotem etc.

Et Decanus et capitulum per attornatum suum veniunt Et alias dixit (*sic*) quod ipsi tenent tenementa vnde ipsa Alianora petit dotem etc. per formam statuti Regis dudum pro mercatoribus editi de hereditate cuiusdam Hugonis filii et heredis Galfridi de sancto Albano sine quo etc. Ita quod predictus Hugo sum(monitus) ad sequendum simul etc. non venit Et habuit diem per esson(iatorem) suum hic ad hunc diem etc.

Ideo predicti Decanus et Capitulum respondeant sine etc.

Et ijdem Decanus et Capitulum nichil aliud dicunt quare predicta Alianora dotem suam inde habere non debeat etc.

Ideo consideratum est quod predicta Alianora recuperet inde dotem suam predictam uersus predictos Decanum et capitulum Et ijdem Decanus et capitulum in misericordia etc.

6. STODLAY *v.* COTYNGHAM.<sup>1</sup>I.<sup>2</sup>

## De Dote.

Alice que fut la femme Thomas de Stodelye porta soun bref de doware uers Agnes que fut la femme .I. de Cotingham etc. Agnes fit defaute apres defaute. par qei suruint I. le fiz I. de Cotingham et pria destre receu a defendre son dreit pur ceo qe la reuercion des tenemenz qe furunt en point destre perduz fut aluy etc.

*Wilb.* Coment apent a vous la reuercion.

*Scrop.* Agnes teynt les tenemenz en noun de doware del etc. I. nostre pere. e de nostre assignement apres qi mort nous sumes entre nostre heritage cum fiz et heir et issint etc. apent la reuercion a nous.

E fut receu.

*Scrop.* Ele ne peut action auer par mesme ceste Alice et Thomas son baron iour etc. et deuant ceux Iustices etc con(i)s(erent) les tenemenz qe ore sunt en demaunde estre le dreit I. de C. nostre pere

<sup>1</sup> Reported by *B, C, M, R, T, X.* This is *Vulg.* 21.

<sup>2</sup> From *R.*

**Note from the Record**—*continued*.

of one messuage seventy-two acres of land with the appurtenances in Marcle as (her) dower etc.

And the Dean and Chapter come by their attorney. And before now (they) said that they hold the tenements, whereof the said Eleanor demands dower etc., by the form of the King's statute published some time ago for the merchants, (and that they hold those tenements) from the heritage of one Hugh son and heir of Geoffrey of St. Albans without whom etc. So that the said Hugh, summoned to sue together etc., did not come. And he had a day by his essoiner here to-day etc.

Therefore let the said Dean and Chapter answer without etc.

And the said Dean and Chapter say nothing else, why the said Eleanor should not thereof have her dower etc.

Therefore it was considered that the said Eleanor should thereof recover her said dower against the said Dean and Chapter. And the said Dean and Chapter in mercy etc.

6. STODLAY *v.* COTYNGHAM.<sup>1</sup>

## I.

## Dower.

Alice wife that was of Thomas of Stodlay<sup>2</sup> brought her writ of dower against Margery wife that was of John of Cotyngnam etc. Margery<sup>3</sup> made default after default,<sup>4</sup> wherefore one John the son of John of Cotyngnam intervened and prayed to be received to defend his right because the reversion of the tenements which were on the point of being lost belonged to him etc.

*Willoughby.* In what way does the reversion belong to you?

*Scrope.* Margery holds the tenements in the name of dower by (the endowment of) John our father, and of our assignment. After his death we entered our heritage as son and heir, and thus etc. does the reversion belong to us.

And he was received.

*Scrope.* She cannot have an action for this same Alice and Thomas her husband (on such) day etc. and before such justices etc. made conusance that the tenements which are now in demand were the right of John of Cotyngnam our father as those which John had of their gift,

<sup>1</sup> This is Fitzherbert, *Dower*, 145, fol. 308. Fitzherbert's version seems to correspond with (I).

<sup>2</sup> Thomas of Stodlay had licence to inclose land in the city of York in 1303 (*Pat.* 1301-7, p. 154).

<sup>3</sup> We give the name as Margery, in accordance with the Record.

<sup>4</sup> In March 1312 Stephen of York sought to replevy to Robert of Cotyngnam, Margery the widow of John of Cottingham, and John son of the same John, land in Beverley which had been taken into the King's hand for their default against Alice widow of Thomas of Stodlay (*Cal. Close* 1307-13, p. 453).



cum ceux qe I. aueit de lour doun. e renderent mesmes les tenemenz a T. e a Alice e a les heirs T. garr(antie) etc. e del houre qe mesme ceste Alice conis(eit) en court qe porte record et rend tout son dreit qel auoit en les tenemenz qel demande ore etc. iugement si en contre<sup>1</sup> conisaunce demesne pousse el action auer.

*Denum.* Vous grantet ben qe nostre baron fut seisi issint qe dower la poyt e dautrepart nous uoloms auerer qe alice renz nauoit en les tenemenz sinon com femme Thomas. iugement si nul conisaunce qele fit viuant son baron auant ceo qe action luy acrust la pussez ore de action barrer etc.

*Scrop.* Del oure qe vous auet conu la fin e la conisaunce par la quele tot manere de dreit se deuesti hors de uostre persone e vesti et acrust a nous iugement iugement (*sic*) si en contre etc.

*Ber.* Auoit ele riens en les tenemenz en temps qant la conisaunce se fit ou noun.

Et a ceo fut chace par la court a respondre.

*Scrop.* Ele nauoit frauntenement al temps qant la conisaunce se fit prest etc.

*Den.* Qele nauoit en les tenemenz qe sunt ore en demande forge com femme T. prest etc.

Et les autres le reuers.

## II.<sup>2</sup>

Dower fin alegge.

Alice qe fu la femme T. de Stoteley porta bref de dower vers vne Agnes qe fist defaute apres defaute suruint I. fiz I. de Cotingham et dist qe Agnes tint en dower du dowment I. son pere et de son assignement.

Et fu receu.

*Scrop.* Ele ne put ren demaunder qar T. son baron et li coniseint ceus tenemenz estre le dreit I. nostre pere et ceus li rendirent et ele fu confesse et obl(igea) etc. agarrantie iugement si contre etc.

*Den.* Alice naueit vnqes ren en ceus tenemenz si noun com feme T. iugement si par nul fin leue tant com ele fu couert de cest accion ali acru par la mort son baron etc.

*Scrop.* Ore demaundoms iugement de vostre conisance etc.

<sup>1</sup> *Suppl. sa.*

<sup>2</sup> *From X.*

and he rendered these same tenements to Thomas and to Alice and to the heirs of Thomas (and bound himself to<sup>1</sup>) warranty etc. and since this same Alice made conusance in a Court which bears record and rendered all her right that she had in the tenements which are now demanded etc., (we demand) judgment whether against her own conusance she can have an action.

*Denom.* You quite admit that our husband was seised so that he could endow her, and on the other hand we are willing to aver that Alice had nothing in the tenements except as the wife of Thomas. Judgment whether any conusance which she made in the lifetime of her husband, before an action<sup>2</sup> accrued to her, can now debar her from the action etc.

*Scrope.* Since you have confessed the fine and the conusance whereby every manner of right was divested out of your person and vested in and accrued to us, judgment whether against etc.

BEREFORD C.J. Did she have anything in the tenements at the time when the conusance was made, yes or no?

And he was driven by the Court to answer to this.

*Scrope.* She did (not<sup>3</sup>) have freehold at the time when the conusance was made. Ready etc.

*Denom.* She did not have in the tenements which are now in demand (anything) except as wife of Thomas. Ready etc.

Issue joined.

## II.

Dower. Fine alleged.

Alice wife that was of Thomas of Stodlay brought a writ of dower against one Margery who made default after default. There intervened John son of John of Cotyngham and said that Agnes held in dower by the endowment of John his father, and of his (own) assignment.

And he was received.

*Scrope.* She can demand nothing, for Thomas her husband and herself made conusance that these tenements were the right of John our father and rendered them to him and she made the conusance and bound herself to warranty. Judgment whether against etc.

*Denom.* Alice never had anything in these tenements except as wife of Thomas. Judgment whether by any fine levied while she was covert (she can be debarred) from this action (which) accrued to her by the death of her husband etc.

*Scrope.* Now we demand judgment upon your confession etc.

<sup>1</sup> This seems omitted in the MS.

<sup>3</sup> It seems that the negative should

<sup>2</sup> Of dower.

be omitted.



*Ber.* Seez a vn si ele aueit altre estat qe de feme.

*Scrop.* Seisi et rendi.

*Den.* Ele naueit ren si noun com femme.

*Alii econtra.*

### III.<sup>1</sup>

Douwere ou le tenant alegga vne fyn qe le baron la femme qe demanda dowere et la femme rendirent mesmes les tenementz dount ele demande ore dowere iugement etc.

Vn A. porta bref de dowere vers vne femme qe fit defaute apres defaute par qei vint vn enfaunt deinz age et dit qe la femme qe feut enplede nauoit rien en les tenements si noun en dowere del dowement son baron <sup>2</sup>et par<sup>2</sup> lenfaunt et pria destre receu.

Et feut receu.

*Wilb.*<sup>3</sup> pur lenfaunt. Ele ne deit dowere auoir qar Johan son baron et ly certain terme etc. cy en Court deuant certain Justic(es) conissoit les tenements estre le droit nostre pere com etc. de lour doun a quel fyn ele feut examine. et demandoms iugement si en coudre la fyn qest son fet demesne doit ele dowere auoir.

*Scrop.* La seisine nostre baron est conu dune part et dautre la quele seisine nous donne estat a demander dowere iugement si ele ne deit dowere auoir.

*Wilb.*<sup>3</sup> Nous dioms qe son baron et ly purchacerent ceux tenements iointement etc. et a lour heirs puis son baron et ly vindrent en Court et conissoient *vt prius* issint qe la femme se demyst par my la fyn del frauntenement <sup>4</sup>qe le<sup>4</sup> out par my <sup>5</sup>la iointenance et<sup>5</sup> purchace. iugement.

*Scrop.* La femme nauoit vnqes estat en les tenements si noun com femme son baron et de sicom sa femme ne se porra mye ouster de son dowere par nul fait durante la couerture demandoms iugement depuis qe nous volloms auerer qele nauoit autre estat etc. si ele ne deit dowere auoir.

*Wilb.*<sup>3</sup> Ele auoit estat par my la chartre de iointf(effement)<sup>6</sup> prest etc.

*Et alij econtra.*

<sup>1</sup> From *M.* Compared with *B.* Headnote from *B.* <sup>2-2</sup> pere *B.* <sup>3</sup> *Wil-*  
lughby *B.* <sup>4-4</sup> qele *B.* <sup>5-5</sup> le ioynt *B.* <sup>6</sup> ioynt purchace *B.*

BEREFORD C.J. Agree as to whether she had (any) other estate than that of wife.

*Scrope.* Seised and rendered.

*Denom.* She had nothing except as wife.

Issue joined.

### III.

Dower where the tenant alleged a fine (whereby) the husband of the woman who demanded dower and the woman herself had rendered the same tenements from which she now demands dower. Judgment etc.

One Alice brought a writ of dower against a woman who made default after default, wherefore an infant below age came and said that the woman who was impleaded had nothing in the tenements except in dower by the endowment of her husband and by (the assignment of) the infant. And he prayed to be received.

And he was received.

*Willoughby (for the infant).* She ought not to have dower, for John her husband and herself, in a certain term etc., here in Court before certain justices made conusance that the tenements were the right of our father as (those which he had) of their gift. And on (the occasion of) that fine she was examined. And we demand judgment whether against the fine which is her own deed she ought to have dower.

*Scrope.* The seisin of our husband has been confessed by both parties and that seisin puts us in the position<sup>1</sup> to demand dower. Judgment whether she ought not to have dower.

*Willoughby.* We say that her husband and herself purchased these tenements jointly etc. (to hold to themselves) and to their heirs, afterwards her husband and herself came into Court and made conusance (here he repeated his former statement), so that by the fine the woman demised the freehold which she had by the joint tenancy and purchase. Judgment.

*Scrope.* The woman never had (any) estate in the tenements except as wife of her husband, and since (the) wife cannot oust herself of her dower by any deed during the coverture, and whereas we are willing to aver that she had no other estate etc., we demand judgment whether she ought not to have dower.

*Willoughby.* She had an estate by the charter of joint feoffment. Ready etc.

Issue joined.

<sup>1</sup> ' Gives us the estate ' would convey a wrong meaning to modern readers.



IV.<sup>1</sup>

Nota dower.

En vn bref de Dowere fyn<sup>2</sup> fust mys en contre la femme a<sup>2</sup> qey<sup>3</sup> ele mesme<sup>2</sup> fut partie<sup>4</sup> *hoc<sup>2</sup> hoc (sic) non obstante* ele fust r(ece)u dauerer gele nauoit rien<sup>5</sup> si noun com femme.

## Notes from the Record.

## I.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 66 recto. Yorkshire.  
Written by Burnedisshe.

Alicia que fuit vxor Thome de Stodlay per Thomam de Stodlay attornatum suum optulit se iiij die uersus Margeriam que fuit vxor Iohannis de Cotyngham de Beuerlaco de placito tercię partis vnius mesuagii cum pertinenciis in Beuerlaco quam eadem Alicia in Curia hic clamat in dotem etc.

Et ipsa non venit Et alias fecit defaultam hic scilicet a die sanctę Trinitatis in xv dies proximo preteritos postquam comparuit hic in Curia etc. Ita quod tunc preceptum fuit vicecomiti quod caperet predictam terciam partem in manum domini Regis etc. Et quod summoneret eum (*sic*) quod esset hic ad hunc diem scilicet a die sancti Michaelis in xv dies auditura inde iudicium suum etc. Et vicecomes modo manda(ui)t quod terra capta est etc. et quod summonuit.

Et super hoc venit quidam Iohannes filius Iohannis de Cotyngham Et dicit quod predicta Margeria tenet predictam terciam partem in dotem de hereditate ipsius Iohannis filii Iohannis. Et petit quod ipse per defaultam ipsius Margerie non amittat Ius suum in hac parte set quod ipse ad defensionem iuris sui admittatur.

Et admittitur.

Et Idem Iohannes dicit quod predicta Alicia non debet inde dotem habere. quia dicit quod alias in Curia domini Edwardi Regis patris domini Regis nunc In crastino Animarum anno regni sui secundo (*sic*) coram Radulpho de Hengham et sociis suis Iusticiariis domini Regis apud Ebor(acum) leuauit quidam finis et postmodum recordata et concessa apud Westmonasterium in Octabis sancti Hillarii anno eiusdem Regis tricesimo tercio inter Robertum filium Walteri Takel de Cotingham et Iohannem fratrem eius virum predictę Margerie querentes et Thomam de Stodlay et predictam Aliciam vxorem eius impediētes de predicto mesuagio cum pertinenciis in Beuerlaco per quem finem predicti Thomas et Alicia recognouerunt predictum mesuagium cum pertinenciis esse ius ipsius Iohannis vt illud quod ijdem Robertus et Iohannes habent de dono predictorum Thome et Alicie. habend(um) et tenend(um) eisdem Roberto et Iohanni et heredibus ipsius Iohannis de capitalibus dominis etc. Et preterea ijdem Thomas et Alicia concesserunt pro se et heredibus ipsius Thome quod ipsi war(antizabunt)

<sup>1</sup> From *T.* Compared with *C.* Headnote from *C.*    <sup>2</sup> *Om. C.*    <sup>3</sup> *qe C.*  
<sup>4</sup> *Add: a la fyn C.*    <sup>5</sup> *nul estat C.*

## IV.

## Note. Dower.

In a writ of dower a fine was put forward against a woman, to which fine she had been a party. Nevertheless she was received to the averment that she had (had) nothing except as wife.

## Notes from the Record.

## I.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 66 recto. Yorkshire.  
Written by Burnedisshe.

Alice wife that was of Thomas of Stodlay by Thomas of Stodlay her attorney presented herself on the fourth day against Margery, wife that was of John of Cotyngham of Beverley, in a plea of a third part of one messuage with the appurtenances in Beverley, which the said Alice does demand in this Court as dower etc.

And she has not come. And before now she made default here, to wit, in the quindene of Holy Trinity last, after she had put in an appearance in this Court etc. So that at that time the Sheriff had been commanded to take the said third part into our Lord the King's hand etc., and to summon her to be here on this day, namely, on the quindene of Michaelmas, to hear her judgment in this matter etc. And the Sheriff has now sent word that the land is taken etc. and that he summoned (etc.).

And thereupon comes one John the son of John of Cotyngham, and says that the said Margery holds the said third part in dower, of the heritage of him the said John son of John; and he prays that by the said Margery's default he do not lose his right in this respect, but that he be admitted to defend his right.

And he is admitted.

And he (John) says that the said Alice ought not thereof to have dower; for he says that before now, in the Court of Lord Edward the King, father of our Lord the present King, on the morrow of All Souls in the thirty-second year of his reign, before Ralph of Hengham and his companions, Justices of our Lord the King at York, a fine was levied, and was afterwards recorded and granted at Westminster on the octave of St. Hilary in the thirty-third year of the same King, between Robert the son of Walter Takel of Cottingham and John his brother, husband of the said Margery, complainants, and Thomas of Stodlay and the said Alice his wife, impedients, as to the said messuage with the appurtenances in Beverley. And by that fine the said Thomas and Alice made conusance that the said messuage with the appurtenances is the right of the said John, as that which the said Robert and John have of the gift of the said Thomas and Alice, to have and hold to them the said Robert and John and to the heirs of the said John from the chief lords etc.; and moreover the said Thomas and Alice did grant for themselves and for the heirs of the said Thomas that they would warrant



*Notes from the Record—continued.*

eisdem Roberto et Iohanni et heredibus ipsius Iohannis predictum mesuagium cum pertinenciis contra omnes homines inperpetuum.

Et profert partem predicti finis que hoc testatur vnde petit Iudicium si contra recognitionem suam predictam accio ei competere possit in hac parte etc.

Et Alicia dicit quod ipsa pretextu predicti finis ab accione dotis precludi non debet in hoc casu, quia dicit quod predictus Iohannes per finem istum supponit ipsam Aliciam habuisse ius siue liberum tenementum in predicto mesuagio simul cum predicto Thoma viro suo Et dicit quod ipsa nunquam aliquid habuit in eodem mesuagio nisi tanquam vxor ipsius Thome cui ipsa extitit legitimo matrimonio copulata Et hoc parata est verificare etc.

Et Iohannes dicit quod predictum mesuagium fuit perquisitum predictorum Thome et Alicie tenendum ipsis Thome et Alicie et heredibus ipsius Thome. Et de hoc ponit se super patriam.

Et Alicia similiter.

Ideo preceptum est vicecomiti quod venire faciat hic In Octabis sancti Hillarii prece petentis etc.

Ad quem diem vicecomes non misit breue etc. Ideo sicut prius preceptum est vicecomiti quod venire faciat hic a die Pasche in xv dies xii etc. per quos etc. Quia tam etc.

## II.

## Feet of Fines, Case 269, file 80, no. 1. Yorkshire.

Hec est finalis concordia facta in Curia domini Regis apud Eboracum in Crastino Animarum. Anno Regni Regis Edwardi filij Regis Henrici Tricesimo secundo. Coram Radulpho de Hengham. Willelmo de Bereford. Elia de Bekyngham. Petro Malorre. Petro Malore (*sic*). Willelmo Howard. et Lamberto de Trikyngham Iusticiarijs et aliis domini Regis fidelibus tunc ibi presentibus. Et postea recordata et concessa apud Westmonasterium in Octabis sancti Hillarii. Anno eiusdem Regis Tricesimo tercio. Coram prefatis Iusticiariis. Inter Robertum filium Walteri Takel de Cottinham et Iohannem fratrem eius querentes et Thomam de Stodlay et Aliciam vxorem eius impediētes de vno Mesuagio cum pertinencijs in Beuerlaco. vnde placitum Warantie Carte summonitum fuit inter eos in eadem Curia. Scilicet quod predicti Thomas et Alicia recognouerunt predictum Mesuagium cum pertinenciis esse Ius ipsius Iohannis. vt illud quod iidem Robertus et Iohannes habent de dono predictorum Thome et Alicie. Habendum et tenendum eisdem Roberto et Iohanni et heredibus ipsius Iohannis de Capitalibus dominis feodi illius per seruicia que ad illud mesuagium pertinent inperpetuum. Et preterea iidem Thomas et Alicia concesserunt pro se et heredibus ipsius Thome quod ipsi warant(izabunt) eisdem Roberto et Iohanni et heredibus ipsius Iohannis predictum mesuagium cum pertinenciis contra omnes homines inperpetuum. Et pro hac recognitione warantia fine et concordia iidem Robertus et Iohannes dederunt predictis Thome et Alicie Centum solidos Argenti.

**Notes from the Record—continued.**

to the said Robert and John and to the heirs of the said John the said messuage with the appurtenances against all men for ever.

And he puts forward a part of the said fine which witnesses this, wherefore he prays judgment whether against her said conusance she can have an action in this respect etc.

And Alice says that under the pretext of the said fine she ought not to be precluded from an action for dower in this case, for she says that the said John by (reason of) this fine supposes her to have had a right or freehold in the said messuage together with the said Thomas her husband; and she says that she never had anything in the said messuage except as wife of the said Thomas, to whom she was accoupled in lawful matrimony. And this she is ready to aver etc.

And John says that the said messuage was the purchase of the said Thomas and Alice, to be held to them, Thomas and Alice, and to the heirs of the said Thomas. And as to this he puts himself upon the country.

And Alice does the like.

Therefore the Sheriff was commanded that he cause to come here on the octave of St. Hilary upon the request of the demandant etc.

On which day the Sheriff has not sent the writ etc. Therefore the Sheriff was commanded *sicut prius* that he cause to come here on the quindene of Easter twelve etc. by whom etc. because both etc.

**II.****Feet of Fines, Case 269, file 80, no. 1. Yorkshire.**

This is the final concord made in the Court of our Lord the King at York on the morrow of All Souls in the thirty-second year of the reign of King Edward the son of King Henry, before Ralph of Hengham, William of Bereford, Elias of Bekyngham, Peter Malorre, William Howard and Lambert of Trikyngham, Justices, and other the King's faithful subjects, then there present, and afterwards recorded and granted at Westminster on the octave of St. Hilary, in the thirty-third year of the same King, before the aforesaid Justices, between Robert the son of Walter Takel of Cottinham and John his brother, complainants, and Thomas of Stodlay and Alice his wife, impedients, as to one messuage with the appurtenances in Beverley, as to which a plea of warranty of charter had been summoned between them in the said Court: to wit, that the aforesaid Thomas and Alice made conusance that the said messuage with the appurtenances is the right of the said John as that which the said Robert and John have by the gift of the said Thomas and Alice, to be had and held to them the said Robert and John and to the heirs of the said John, from the chief lords of that fee, by the services which belong to that messuage, for ever. And moreover the said Thomas and Alice did grant for themselves and for the heirs of the said Thomas that they would warrant to the said Robert and John and to the heirs of the said John the said messuage with the appurtenances against all men for ever. And for that conusance, warranty, fine, and concord the said Robert and John gave to the said Thomas and Alice one hundred shillings of silver.



7. LE VEEL v. BERKLE.<sup>1</sup>

Dowere<sup>2</sup> <sup>3</sup>vers le gardein qe dist qe la femme luy detient leire etc.<sup>3</sup>

Vn femme porta son bref de dowere vers vn gardeyn.<sup>4</sup>

*Herle.* Vous auez aloigne<sup>5</sup> le heire vostre baron qe dust estre en nostre garde et quel houre qe vous nous volet rendre le corps nous vous rendroms dowere iugement si vous vers nous dowere puisset demaunder.

*Scrop.* Lenfaunt fut en nostre garde <sup>6</sup>par resoun denorture<sup>6</sup> et autre chose ne clamoms et en <sup>7</sup>le Countee de Gloucestre en C.<sup>7</sup> le Counte de Gloucestre vynt <sup>8</sup>oue sagent et prist lenfaunt et enporta encountre nostre volente issi qe nous ne luy aloynames pas prest etc. et pur ceo qe le Counte<sup>8</sup> clama le garde<sup>9</sup> pur ceo qe le pere lenfaunt tynt de luy ascun tere.

*Ber.*<sup>10</sup> Nous ne pledoms poynt en ceo cas. qi ad dreit de la garde ou le Counte ou cely vers qi vous portet vostre bref mes ceo qe vous auet dit. amount ataunt qe vous ne luy aloynastes pas.

*Herle.* La ou ele dit qe lenfaunt fut en sa garde a C. en la Countee de G. et<sup>11</sup> le Counte le prist hors de sa garde *contra voluntatem suam*. nous vous dioms qe lenfaunt fut nee<sup>12</sup> a B. en le Countee de<sup>12</sup> W.<sup>12</sup> ou le pere lenfaunt tenyst de nous et illoeq(es) nori tauntqe la mere luy aloigna prest etc.

*Et habuit patriam de vtroque Comitatu etc.*

## Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 364 recto. Gloucestershire and Wiltshire.  
Written by Burnedisshe.

Iohanna que fuit vxor Bogonis le veel per Willelmum de Troubrigge attornatum suum petit uersus Thomam de Berkle custodem terre (et)<sup>13</sup>

<sup>1</sup> From *P.* Compared with *C*, *T.*    <sup>2</sup> *Om. T.*    <sup>3-3</sup> *Om. C, T.*    <sup>4</sup> Gilbert  
*C.*    <sup>5</sup> *Aleyn T.*    <sup>6-6</sup> com en la garde sa miere *T.*    <sup>7-7</sup> *Om. C.*    <sup>8-8</sup> *Om. T.*  
<sup>9</sup> *Add: du corps T.*    <sup>10</sup> *Herui T.*    <sup>11</sup> *Add: counte qe C. Add: la T.*  
<sup>12</sup> *Om. T.*    <sup>13</sup> This seems obliterated.

7. LE VEEL *v.* BERKLE.<sup>1</sup>

Dower against the guardian who said that the woman withheld the heir from him etc.

A woman brought her writ of dower against a guardian.

*Herle.* You have removed your husband's heir who ought to have been in our wardship, and as soon as you will render<sup>2</sup> (his) body to us we will render<sup>2</sup> dower to you. Judgment whether you can demand dower against us.

*Scrope.* The child was in our wardship by reason of nurture, and we demand nothing else. And in C., in the county of Gloucester, the Earl of Gloucester came with his men and took the child and carried (him) off against our will, so that (it was) not we (who) removed him. Ready etc. And (that happened) because the Earl claimed the wardship since the child's father (had) held from him certain land.

BEREFORD C.J. We do not hold a plea in this case as to who has the right of wardship, whether the Earl or he against whom you bring your writ. But what you have said amounts to this, that you did not remove him (the heir).

*Herle.* Whereas she says that the child was in her wardship in C. in the county of Gloucester and the Earl took him out of her wardship against her will, we tell you that the child was born in B. in the county of Wiltshire<sup>3</sup> where the child's father held of us, and there (the child was) nurtured until the mother removed him. Ready etc.

And he had the country from both counties.

## Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 364 recto. Gloucestershire and Wiltshire.  
Written by Burnedisshe.

Joan widow of Bevis Le Veel by William of Troubrigge, her attorney, demands against Thomas of Berkle,<sup>4</sup> the guardian of the land of the heir of

<sup>1</sup> This is Fitzherbert, *Dower*, 144, fol. 308 recto.

<sup>2</sup> This word is used twice in order to emphasise the correlativity of the right to dower and the duty to restore the body.

<sup>3</sup> There is an obvious confusion of the two counties.

<sup>4</sup> This is, of course, Berkeley. Thomas of Berkeley was on the Commission to inquire into claims to the Scottish crown in June 1292 (Palgrave, *Doc. illus. Hist. of Scotland*, p. 54). He was employed on a mission to Flanders in 1296 (*Cal. Pat.* 1292-1301, pp. 177, 321) and was one of the envoys to Clement V in 1307 (*ibid.* 1301-1307,

pp. 529-30; *Cal. Close* 1302-7, pp. 215, 337, 508). He had signed the Barons' letter to the Pope in 1301 (Rymer, *Foedera*, ii, 873; *Chron. Edw. I and Edw. II*, i, 123). In 1313 he received a commission to inquire into disaffection at Bristol (*Cal. Pat.* 1307-13, p. 605), which was resisted by the townsfolk (*ibid.* 1313-17, pp. 69, 73), who had a long-standing quarrel with him (*ibid.* 1301-1307, pp. 352-3, 356). He was a commissioner of oyer and terminer from 1299 (*ibid.* 1292-1301, p. 464) to 1317 (*ibid.* 1313-17, pp. 66, 246, 415, 696), and died before July 5, 1322 (*Cal. Close* 1318-23, p. 472).



**Note from the Record**—*continued.*

heredis Bogonis le veel terciam partem tresdecim mesuagiorum quatuor carucatarum et duodecim virgatarum terre vnius columbarij duorum molendinorum aquaticorum quadraginta acrarum prati quinquaginta acrarum bosci et quindecim libratarum redditus cum pertinenciis in Wottone et Hutteneforde Et uersus Iohannem filium Thome de Berkle custodem terre heredis (*sic*) Bogonis de veel terciam partem tresdecim mesuagiorum quatuor carucatarum et duodecim virgatarum (*sic*) vnius columbarii duorum molendinorum aquaticorum quadraginta acrarum prati quinquaginta acrarum bosci et quindecim libratarum redditus cum pertinencijs in eisdem villis vt dotem suam etc.

Et Thomas et Iohannes per Iohannem de Elkestone attornatum suum veniunt Et predictus Iohannes quo ad tenementa vnde etc. dicit quod ipse nichil habet in custodia eorundem tenementorum nisi ad voluntatem predicti Thome Et Idem Thomas est tenens de eadem custodia et predictus Thomas hoc bene concedit.

Et Idem Thomas dicit quod predicta Iohanna non dum debet inde dotem habere. Dicit enim quod eadem Iohanna post mortem predicti Bogonis quondam viri sui habuit in custodia sua Petrum filium et heredem predicti Bogonis infra etatem existentem cuius custodia et maritagium ad ipsum Thomam pertinet videlicet apud Hamme in Comitatu predicto et heredem illum inde elongavit quominus Idem Thomas custodiam corporis eiusdem heredis consequi potuit, vnde dicit quod si eadem Iohanna heredem illum ei reddere velit paratus est ei dotem suam predictam reddere etc.

Et Iohanna dicit quod ipsa non debet de dote sua consequenda retardari in hac parte eo quod ipsa non potest predictum heredem ipsi Thome reddere etc. nec ipsa vncquam heredem illum elongavit sicut predictus Thomas dicit Dicit reuera quod ipsa tempore obitus predicti Bogonis quondam viri sui etc. comorabatur apud Ablynton(e) in Comitatu Wilt(escire) et tunc fuit pregnans de predicto herede Et ibidem morabatur custodiens predictum heredem ratione tenere etatis etc. quousque Comes Glouc(estrie) clamando maritagium predicti heredis ratione tenementorum que predictus Bogo pater predicti heredis de ipso Comite tenuit per seruicium militare per balliuos suos seisiuit corpus predicti heredis et ipsum abduxit absque hoc quod ipsa Iohanna heredem illum elongavit apud Hamme sicut predictus Thomas dicit. Et hoc petit quod inquiratur per patriam.

Et Thomas similiter.

Ideo preceptum est tam vicecomiti Wilt(escire) quam vicecomiti Glouc(estrie) quod venire fac(iant) hic a die sancti Hillarii in xv dies xii etc. per quos etc. Et qui nec etc. ad recognoscendum etc. Quia tam etc.

**Note from the Record—continued.**

Bevis Le Veel, a third part of thirteen messuages, four carucates and twelve virgates of land, one pigeon-house, two water-mills, forty acres of meadow, fifty acres of wood and fifteen pounds of rent with the appurtenances in Wottone<sup>1</sup> and Huttenford,<sup>2</sup> and against John the son of Thomas of Berkle, the guardian of the land of the heir of Bevis Le Veel, a third part of thirteen messuages, four carucates and twelve virgates, one pigeon-house, two water-mills, forty acres of meadow, fifty acres of wood and fifteen pounds of rent with the appurtenances in the same villis, as her dower etc.

And Thomas and John by John of Elkestone, their attorney, come. And the said John says as to the tenements whereof etc., that he has nothing in the wardship of those tenements save at the will of the said Thomas, and the said Thomas is tenant of that wardship. And this the said Thomas fully admits.

And the said Thomas says that the said Joan ought not yet to have thereof dower. For he says that the said Joan, after the death of the said Bevis, her late husband, did at Ham<sup>3</sup> in the said county have in her wardship Peter, the son and heir of the said Bevis, who (Peter) was under age, and whose marriage belongs to the said Thomas—and she did remove thence the said heir so that Thomas could not obtain the wardship of the body of the said heir. And he says that if the said Joan will render to him the heir, then he is ready to render to her her said dower etc.

And Joan says that she ought not to be delayed in this respect in obtaining her dower, because she cannot render the said heir to Thomas etc., nor did she ever remove the said heir, as the same Thomas says. She says indeed that at the time of the death of the said Bevis, her late husband etc., she was staying at Ablington in the county of Wiltshire,<sup>4</sup> and at that time she was pregnant with the said heir; and there she did stay warding the said heir by reason of (his) tender age etc., until the Earl of Gloucester, claiming the marriage of the said heir by reason of tenements which the said Bevis, father of the said heir etc., had held from the said Earl by knight's service,<sup>5</sup> by his bailiffs seized the body of the said heir and carried him away, and she, Joan, did not remove the said heir at Ham, as the said Thomas says. And she prays that this be inquired by the country.

And Thomas does the like.

Therefore both the Sheriff of Wiltshire and the Sheriff of Gloucestershire were commanded that they cause to come here on the quindene of St. Hilary twelve etc. by whom etc. and who are neither etc. to find etc. because both etc.

<sup>1</sup> Now Wotton-under-Edge.

<sup>2</sup> Probably Huntingford.

<sup>3</sup> It does not appear from the inquisitions that the Le Veels held any land in Ham, co. Glouc. Their land in Wotton was held of the Berkeleys (*Feud. Aids*, ii, 241), but the service was unspecified.

<sup>4</sup> This manor was held of Henry

Sturmy by Peter le Veel at the time of his death (*Cal. inq. p.m.* viii, no. 466).

<sup>5</sup> Cf. Stat. Westm. 2, cap. 16. In 1314 Peter le Veel held fees in Leswyrny and St. Fagans (co. Glamorgan) and Charfield (co. Glouc.) of Gilbert Earl of Gloucester (*Cal. inq. p.m.* v, no. 538; viii, no. 466).



8. BRYNKELE *v.* LE VAUNERE AND WHITEFELDE.<sup>1</sup>I.<sup>2</sup>

Douere ou garde f(u)t gele retensit si ele vst rens del tenemenz dont son baroun fut seisi etc.

Vne Ihoane porta soun bref de dowere vers vn Ric(hard) qe vocha agarr(antie) vn Willem le fiz Robert qe cors et tere<sup>3</sup> furent en la garde la dist Ihoane par resoun de norture qe vient en court et entra en la garr(antie) et rendi par qei agarde fuit. gele retensit si ele vust rienz. qe fust en la s(ei)sine soun baroun et si noun gele recouerisit vers le tenant des tenemenz demaundez etc.

II.<sup>4</sup>

Vne Ione porta bref de dower vers R. qi voucha T. fiz e heir le baron en la garde la dite Ione par r(eson) de nurture. qe vint et garr(anti) et rendi ali m(esme) le t(e)n(aun)t dist gele aueit assez en garde par qei ag(arde) fu quel rec(ouerist) dela terre le heir en sa garde si el eit et si ne mie vers le tenant.

## Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 147 recto. Middlesex, Oxfordshire and Berkshire. Written by Hillary.

Isabella que fuit vxor Iohannis de Brynkele de London(io) petit versus Robertum de Whitefelde quem Petrus le Vaunere et Cristiana vxor eius vocauerunt ad Warantum et qui eis war(antizauit) terciam partem vnus mesuagii et octo shoparum cum pertinenciis in parochia sancti Clement(is) Dacorum extra barram noui templi London(iensis) vt dotem ex dotacione predicti Iohannis quondam viri etc.

Et Robertus per Willelmum le Clerk attornatum suum venit Et alias vocauit inde ad warantum Petrum le vaunere et Cristianam vxorem eius qui modo veniunt per summonicionem per Walterum de Thorpe attornatum suum. Et ei War(antizant) etc. Et vocant inde ad War(antum) Stephanum filium Iohannis de Brinkele qui est infra etatem et cuius corpus et terre sunt in cus-

<sup>1</sup> Reported by *P*, *X*.    <sup>2</sup> From *P*.    <sup>3</sup> The abbreviation mark is wrongly placed and makes the word appear like *trier*.    <sup>4</sup> From *X*.

8. BRYNKELE *v.* LE VAUNERE AND WHITEFELDE.

## I.

Dower where it was awarded that she should retain whatever she had, if she had anything, of the tenements of which her husband had been seised.

One Isabel brought her writ of dower against one Peter who vouched to warranty one Stephen the son of John whose body and land were in the wardship of the said Isabel by reason of nurture. (Isabel) came into Court and entered into the warranty and rendered, wherefore it was awarded that she should retain (whatever) if (anything) she had that had been in the seisin of her husband, and if (she had) nothing that she should recover against the tenant of the tenements demanded etc.

## II.

One Isabel brought a writ of dower against R. who vouched T. son and heir of the husband, in the wardship of the said Isabel by reason of nurture. (Isabel) came and warranted and rendered to herself. The tenant said that she had enough in wardship. Therefore it was awarded that she should recover from the land of the heir in her wardship if she had (any), and if not (that she should recover) against the tenant.

## Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 147 recto. Middlesex, Oxfordshire and Berkshire. Written by Hillary.

Isabel wife that was of John of Brynkele<sup>1</sup> of London demands against Robert of Whitefelde,<sup>2</sup> whom Peter le Vaunere and Christiana his wife vouched to warranty and who warranted them, a third part of one messuage and eight shops with the appurtenances in the parish of St. Clement Danes outside the bar of the new Temple of London,<sup>3</sup> as (her) dower by the endowment of the said John her late husband etc.

And Robert comes by William le Clerk, his attorney. And before now he vouched in this matter to warranty Peter le Vaunere and Christiana his wife, who now come, upon summons, by Walter of Thorpe, their attorney, and warrant him etc. And they vouch in this matter to warranty Stephen, the son of John of Brinkele, who is under age and whose body and lands are in the wardship of the said Isabel. (And they do so vouch him) by reason of a

<sup>1</sup> John of Brynkele acted for Joan, widow of Adam of Welle, at the receipt of her dower in Chancery in 1311 (*Cal. Close*, 1307-13, p. 439).

<sup>2</sup> Robert of Whitefelde was pardoned as an adherent of Lancaster in 1313

(*Cal. Pat.* 1313-17, p. 21).

<sup>3</sup> The Knights Templars had moved from Holborn to the west end of Fleet Street in 1184-5 (Dugdale, *Monasticon*, vi, p. 817; Stow, *Survey of London* (ed. Strype), ii, 270).



**Note from the Record**—*continued*.

todia predicte Isabelle per cartam predicti Iohannis patris etc. quam proferunt hic in Curia Et que testatur quod idem Iohannes de Brynkele pater etc. dedit concessit et carta sua confirmavit predictis Petro et Cristiane predicta tenementa cum pertinencijs vn(de) etc. habenda et tenenda eisdem Petro et Cristiane et heredibus suis imperpetuum Et obligavit se et heredes suos ad war(antizandum) etc. Et dicunt quod eadem Isabella custos etc. summoneri debet in Comitatibus London(iensi) Oxon(iensi) et Berk' etc.

Et eadem Isabella custos etc. presentem habens predictum heredem hic in Curia tanquam nichil habens in Custodia sua de hereditate predicti heredis nomine ipsius heredis war(antizat) predictis Petro et Cristiane predictam terciam partem cum pertinencijs Et reddidit predicte Isabelle petenti predictam dotem suam.

Ideo habeat inde seisinam suam etc.

Set cesset execuçio seisine etc. eo quod predicti Petrus et Cristiana dicunt quod predicta Isabella custos etc. habet terras et tenementa apud Henle(y) in Comitatibus Oxon' et Berk' et eciam in London' In custodia sua de hereditate predicti heredis ad suffic(ienciam) etc. vnde predicta Isabella petens etc. habere potest ad valenciam tercie partis predicte Et hoc parati sunt verificare etc.

Et Isabella custos etc. dicit quod ipsa nulla habet terras seu tenementa in custodia sua de hereditate predicti heredis in Comitatibus predictis. Et de hoc ponit super patriam.

Et Petrus et Cristiana similiter.

Ideo preceptum est vicecomitibus Londoniensibus Oxoniensi et Berk' quod venire faciant hic a die sancti Hillarii in xv dies prece petentis xii etc. per quos etc. ad recognoscendum etc. Quia tam etc.

Et predicta Isabella custos predicti heredis posuit loco suo Thomam le Palmere.

Postea a die Pasche in tres septimanas ven(erunt) partes predictae per attornatos suos Et similiter Iuratores Comitatum Londoniensis, Oxoniensis et Berk' de consensu parcium electi. Qui dicunt super sacramentum suum, quod predicta Isabella a die sancti Michaelis in xv dies proximo preterit(os) nec vnquam postea, aliquas terras seu tenementa habuit in custodia sua de hereditate predicti heredis in Comitatibus predictis.

Ideo consideratum est quod predicta Isabella recuperet seisinam suam de predicta tercia parte uersus predictos Petrum et Cristianam Et iidem Petrus et Cristiana habeant de terra <sup>1</sup>predicti Roberti et idem Robertus de terra<sup>1</sup> predictorum Petri et Cristiane ad valenciam etc. Et ijdem Petrus et Cristiana de terra predicti heredis ad valenciam cum acciderit etc. Et Petrus et Cristiana in misericordia etc.

<sup>1-1</sup> Interlined.

**Note from the Record**—*continued*.

charter of the said John the father etc., which they put forward here in Court, and which witnesses that the said John of Brinkele the father etc. did give, grant, and by his charter confirm, to the said Peter and Christiana, the said tenements with the appurtenances whereof etc., to have and hold for them the said Peter and Christiana and for their heirs for ever, and he bound himself and his heirs to warrant etc. And they say that the said Isabel, guardian etc. ought to be summoned in the counties of London, Oxfordshire and Berkshire etc.

And the said Isabel, guardian etc., having present here in Court the said heir, as having in her wardship nothing of the heritage of the said heir, did in the name of the heir warrant to the said Peter and Christiana the said third part with the appurtenances, and she did render to the said Isabel, the demandant, her said dower.

Therefore let her have her seisin thereof etc.

But let execution of the seisin be stayed etc. because the said Peter and Christiana say that the said Isabel, guardian etc., has in her wardship sufficient lands and tenements at Henley in the counties of Oxfordshire and Berkshire, and also in London, of the heritage of the said heir etc., whereof the said Isabel, the demandant etc., can have to the value of the said third part. And this they are ready to aver etc.

And Isabel, guardian etc., says that she has no lands or tenements in her wardship, of the heritage of the said heir, in the said counties. And as to this she puts herself upon the country.

And Peter and Christiana do the like.

Therefore the Sheriffs of London, Oxfordshire and Berkshire were commanded that they cause to come here on the quindene of St. Hilary, upon request of the demandant, twelve etc. by whom etc. to find etc. because both etc.

And the said Isabel, guardian of the said heir, put in her place Thomas le Palmere.

Afterwards in three weeks from Easter there came the said parties by their attorneys, and likewise the jurors of the counties of London, Oxfordshire, and Berkshire, chosen by consent of the parties, who say upon their oath that the said Isabel did not have in her wardship either on the quindene of Michaelmas last or ever afterwards any lands or tenements of the heritage of the said heir in the said counties.

Therefore it was considered that the said Isabel should recover her seisin of the said third part against the said Peter and Christiana. And let Peter and Christiana have of the land of the said Robert, and Robert of the land of the said Peter and Christiana, to the value etc., and the said Peter and Christiana of the land of the said heir to the value when it comes (to him) etc. And Peter and Christiana in mercy etc.



9. DE LA SALE *v.* BLOXHAM AND MILTECOMBE.<sup>1</sup>

<sup>2</sup>Garr(antie) voch(e) ou f(u)t dist qil ne dust mye garr(antir) pur ceo qe les tenemenz ne passer(ent) mye parmy lach(a)r(tr)e ne la ch(a)r(tr)e ne fut mye fete en sa s(ei)s(i)ne etc.<sup>2</sup>

Vne Galne<sup>3</sup> fut<sup>4</sup> voche a garrantie qe vint en court et demanda par quei etc.

*Stonore.* Veiez si vostre fet<sup>4</sup> qe testmoigne qe vous<sup>5</sup> auet done vn mees .ii.<sup>6</sup> verge de terre etc. le quel fet<sup>4</sup> veut qe vous e vos heirs nous<sup>4</sup> seient obligez ala garrantie.

*Will.*<sup>7</sup> Nous ne pom dedire le fet par quei en dreit de les ii parties de la demande nous entroms enla garrantie. e en dreit de la tiez partie si dioms nous qil auoit<sup>8</sup> vnqes estat parmy cel don ne parmy<sup>9</sup> la chartre ne fut pas fete en sa seisine einz au temps de la confeccioun etc. si fut vn Adam<sup>10</sup> dè B. tenant de cele tyerce partie prest etc.

*Stonoure.* E nous iugement depeus qil ad conu le fet deinz queu fet la demande est compris enterement et qe testmoigne le doun de la tierce partie auxibien com de les ii. parties et nous seisi sumes delenter qest compris en le fet iugement si vous ne deuert garr(antir).

*Scrop Justice.* Si ieo vous face vne chartre de ii. carues de terre et vous liuere la seisine dela vne pus apres vous acrochez lautre vous estes enplede de amedeux<sup>11</sup> vous me voch(ez) par la chartre ieo ne garr(antirai) forqe <sup>12</sup>la vne<sup>12</sup> dount la seisine vous fut liuere. qar la chartre est<sup>13</sup> voide en dreit delautre carr(ue) etc. mes autre seroit si la chartre fut fete en vostre seisine.

*Ber. ad idem.* Le purchace ou <sup>14</sup>la crochement<sup>14</sup> qe vous auet fut pus la confeccioun de la chartre ne vous donne mye estat ne poer de luy lier<sup>15</sup> ala garrantie saunceo qe vous pusset dire qe la chartre ne fut fete en vostre seisine ou qe les tenemenz ne passerent vnqes hors <sup>16</sup>de vostre seisine parmy la chartre et pur ceo dites lun ou lautre.

*Scrop.* Qe les tenemenz enterement passerent ou<sup>16</sup> la chartre

<sup>1</sup> From *R.* Compared with *P.* Headnote from *P.* <sup>2-2</sup> Vouch(er) a garr(antie) *R.* <sup>3</sup> Galiene *P.* <sup>4</sup> *Om.* *P.* <sup>5</sup> *Add:* nous *P.* <sup>6</sup> et vn *P.* <sup>7</sup> Walingford *P.* <sup>8</sup> nouoit (*sic*) *P.* <sup>9</sup> *Add:* cele chartre ne *P.* <sup>10</sup> A. *P.* <sup>11</sup> ambedeus *P.* <sup>12-12</sup> lene *P.* <sup>13</sup> fut *P.* <sup>14-14</sup> le acchochement *P.* <sup>15</sup> *Om.* *P.* <sup>16-16</sup> *Om.* *P.*

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Voucher to warranty, where it was said that she ought not to warrant because the tenements did not pass by the charter and the charter was not made during her seisin etc.

One Galiena was vouched to warranty ; she came into Court and asked on what ground etc.

*Stonore.* See here your deed which witnesses that you gave <sup>1</sup>to us<sup>1</sup> one messuage, two virgates of land etc., and states that you and your heirs shall be bound to us to the warranty.

*Willoughby.* We cannot deny the deed, therefore we enter into the warranty as to the two parts of the demand. As to the third part, we say that he<sup>2</sup> never had any estate by <sup>1</sup>that gift or by that charter, nor was<sup>1</sup> the charter made during her<sup>3</sup> seisin, but at the time of the making (of the charter) one Adam of B. was tenant of the said third part. Ready etc.

*Stonore.* And we demand judgment since he has granted the deed, in which the demand is wholly comprised and which witnesses the gift of the third part as well as of the two parts, and we are seised of the whole that is comprised in the deed. Judgment whether you ought not to warrant.

SCROPE J. If I make you a charter as to two carucates of land and deliver to you the seisin of one carucate only ; if afterwards you accroach the other to yourself ; are impleaded of both, and vouch me by (reason of) the charter, then I shall only warrant you the one carucate whereof the seisin was delivered to you, for as to the other carucate the charter is void etc. But it would be different were the charter made while you were seised.

BEREFORD C.J. (to the same effect). The purchase or the accroachment which you made after the making of the charter gives you no estate and no power to compel him to the warranty, unless you could say that the charter was<sup>4</sup> made while you were seised <sup>5</sup>or that the tenements did never pass out of your seisin by the charter.<sup>5</sup> And therefore say either the one or the other.

*Scrope.* Ready to aver that the tenements passed entirely with

<sup>1-1</sup> Supplied from *P.*

<sup>2</sup> I.e. the tenant who vouched.

<sup>3</sup> We take this to relate to Galiena. It is possible, however, that it relates to the defendant, who was the grantee, and who might conceivably have received the gift, by charter, of land of which he was already seised. This is the possibility referred to by *Scrope J.* in his statement in the text.

<sup>4</sup> It seems that the negative in the French text does not exclude the possibility of this meaning.

<sup>5-5</sup> There is obviously some confusion here. Probably the text from which the report is taken was not clear. It should be noted that this part is altogether missing in *P.*



et la seisine nous fut liure ioyntement <sup>1</sup>oue la chartre<sup>1</sup> prest del auerer.

*Et alii* <sup>2</sup>que vnques seisine de la 3<sup>e</sup> partie de vostre demande ne fut a vous liure pret<sup>2</sup> etc.

#### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 253 verso. Oxfordshire.

Written by Wisshawe.

Dionisia que fuit vxor Walteri de la Sale de Albury per Iohannem de Bodicote attornatum suum petit uersus Iohannem de Bloxham terciam partem vnus mesuagii et vnus virgate terre cum pertinenciis in Yelebury vt dotem etc.

Et Iohannes per Adam de Harewedone attornatum suum venit Et alias vocauit inde ad warrantum Galianam de Miltecombe que modo venit per sum(monicionem) per Iohannem de Miltecombe attornatum suum et petit sibi ostendi per quod debeat ei war(rantizare) etc.

Et Iohannes dicit quod eadem Galiana in pura viduetate sua etc. dedit et carta sua confirmauit eidem Iohanni et heredibus suis predicta tenementa cum pertinencijs vnde etc. que Henricus Ilger villanus ipsius Galiane<sup>3</sup> vna cum predicto villano et tota sequela sua, et obligauit se et heredes suos ad war(rantizandum) etc. Et profert quandam Cartam sub nomine predictae Galiane que hoc idem testatur. vnde dicit quod ea ratione tenetur ei war(rantizare) etc.

Et Galiana quo ad duas partes predictorum tenementorum vnde etc. ei war(rantizat), et dicit quod predicta Dionisia non debet inde dotem habere. Quia dicit quod predictus Walterus quondam vir etc. die quo ipsam desponsauit nec vmquam postea fuit in seisine de predictis duabus partibus Ita quod ipsam inde dotare potuit Et de hoc ponit se super patriam.

Et Dionisia similiter.

Et quo ad terciam partem eorundem tenementorum vnde etc. dicit quod ipsa per cartam illam ei war(rantizare) non debet Quia dicit quod idem Iohannes nunquam fuit seisitus de predicta tercia parte per factum predictum ex dono ipsius Galiane eo quod quedam Elena le Orfeure de Oxon(ia) tenet predictam terciam partem in dotem etc. Et hoc parata est verificare etc. Et petit iudicium etc.

Et Iohannes dicit quod ipse seisitus est de tercia parte illa per factum predictum, et quod eadem Elena nichil habet in predicta tercia parte, nisi quendam redditum Triginta et duorum denariorum percipiendum per manus ipsius Iohannis Et hoc paratus est verificare.

Et Galiana similiter.

<sup>1-1</sup> *Om. P.*

<sup>2-2</sup> *econtra. Ideo P.*

<sup>3</sup> *Suppl. ten(uit).*

the charter and that the seisin was delivered to us together with the charter.

And the other party (said :) the seisin of the third part of your demand has never been delivered to you. Ready etc.

### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 253 verso. Oxfordshire.  
Written by Wisshawe.

Denyse widow of Walter de la Sale of Albury, by John of Bodicote her attorney, demands against John of Bloxham<sup>1</sup> a third part of one messuage and one virgate of land with the appurtenances in Youlbury as dower etc.

And John comes by Adam of Harewedone, his attorney; and before now he vouched to warranty Galiena of Miltecombe, who now comes, upon summons, by John of Miltecombe, her attorney, and asks that it be shown to her on what ground she ought to warrant him etc.

And John says that that same Galiena during her pure widowhood etc. did grant and by her charter confirm to him, John, and to his heirs, the said tenements with the appurtenances, whereof etc., and which (were held by) Henry Ilger, a villain of the said Galiena, together with the said villain and his whole suit, and she bound herself and her heirs to warrant etc. And he proffers a charter under the name of the said Galiena, witnessing the same thing; and he says that for that reason she is bound to warrant him etc.

And Galiena, as to two parts of the said tenements whereof etc., does warrant him, and she says that the said Denyse ought not to have dower thereof. For she says that the said Walter late husband etc. was not seised of the said two parts either on the day on which he married her, or ever afterwards, so that he could (not) have endowed her thereof. And of this she puts herself upon the country.

And Denyse does the like.

And as to the third part of the said tenements whereof etc. she says that by (reason of) that charter she ought not to warrant him. For she says that the said John has never been seised of the said third part by the aforesaid deed, by gift of her the said Galiena, because one Ellen le Orfeure of Oxford holds the said third part in dower etc. And this she is ready to aver etc. And she demands judgment etc.

And John says that he is seised of that third part by (virtue of) the aforesaid deed, and that the said Ellen has nothing in the said third part, except a rent of thirty-two pence, to be received by the hands of the said John. And this he is ready to aver.

And Galiena likewise.<sup>2</sup>

<sup>1</sup> Keeper of the Templars' lands in Berks., Wilts., Northants and Oxon. in 1311 (*Cal. Close* 1307-13, pp. 381, 392, 510, 512), and grantor of certain lands to Godstow Abbey in 1314 (*ibid.* 1313-18, p. 104). In 1316 he came to the King prepared to go to Scotland,

but afterwards returned home on business, leaving a substitute (*ibid.* p. 369).

<sup>2</sup> Observe the obvious clerical mistake: the formula used here would be correct if John had 'put himself upon the country.'



**Note from the Record**—*continued*.

Ideo preceptum est vicecomiti quod venire faciat hic a die sancti Hillarii in xv dies xii etc. per quos etc. Et qui nec etc. ad recognoscendum etc. Quia tam etc.

Idem dies datus est predicte Dionisie per attornatum suum hic in banco etc.

10. ANON.<sup>1</sup>

*Nota de visu* ou le Baroun fut ouste de la vewe pur ceo quil troua sa femme seisie etc. ut patet.

Vne bref de Douwer fut porte vers vn Iohan et Alice sa femme et il demaunda la vewe.

*Lauf.* Vous ne devez la vewe auer qe Alice vostre femme<sup>2</sup> entra par nostre Baroun iugement si etc.

*Heidone.* Taunt amonte qe Iohan ne entra pas par vostre Baroun einz Alice soulement. dounqe demaunda<sup>3</sup> iugement si Iohan ne deit la vewe auer qe nul estat nauoit par vostre baroun.

*Berr.* Vous ne dites point qe Alice nentra etc. et vous ne devez mye mesconutre de ques tenemenz vous trouastes vostre femme seisie qant vous lesposates par quei vous nauerez pas la vewe.

*Heidone* voucha a garrantie.

*Et stetit etc.*

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Dowere ou recouerir fut allege.

Vne femme porta bref de dowere.

*Malm.* Ele ne doit dowere auer qe nous mesmes autre foiz portames vn assise de nouele disseisine vers son Baroun de qi dowement etc. de mesmes les tenemenz dount ele demaunde ore dowere par quel assise son baron fut ateynt disseisour. et comaunde a la prisone pur la disseisine fait aforce et as armes et issint recouerames mesmes les tenemenz vers luy com vers disseisour. et issi lassise defet. iugement si ele de ses tenemenz puisse dowere demaunder.

*Scrop.* Eit son record.

<sup>1</sup> From *P*.

<sup>2</sup> One of the six strokes in *mm* is missing.

<sup>3</sup> demaund(oms) (?)

<sup>4</sup> From *P*.

**Note from the Record**—*continued*.

Therefore the sheriff was commanded that he cause to come here on the quindene of St. Hilary twelve etc., by whom etc., and who are neither etc., to find etc., because both etc.

The same day was given to the said Denyse by her attorney here in the Bench etc.

## 10. ANON.

*Dower.* The husband was ousted from the view because he (had) found his wife seised etc.

A writ of dower was brought against one John and Alice his wife. And he demanded the view.

*Laufare.* You ought not to have the view because Alice your wife entered by our husband. Judgment whether etc.

*Hedon.* It amounts to this, that it was not John who entered by your husband, but only Alice. Then he demanded<sup>1</sup> judgment whether John ought not to have the view since he had no estate by your husband.

BEREFORD C.J. You do not say that Alice did not enter etc. and you ought not to be ignorant of what tenements you found your wife seised when you married her. Therefore you shall not have the view.

*Hedon* vouched to warranty.

And (the voucher) stood.

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Dower where recovery was alleged.

A woman brought a writ of dower.

*Malberthorpe.* She ought not to have dower for we ourselves brought some time ago against her husband, of whose endowment etc., an assize of novel disseisin of these same tenements from which she now demands dower. By that assize her husband was attainted of disseisin and sent to prison for having committed the disseisin with force and arms. Thus we recovered these tenements against him as against a disseisor, and (if she were to recover dower<sup>2</sup>) thus the assize (would be<sup>2</sup>) defeated. Judgment whether she can demand dower from these<sup>3</sup> tenements.

*Scrop.* Let her have her record.

<sup>1</sup> *Or* : We demand (?)

<sup>3</sup> *Ses* may stand, with mediæval

<sup>2</sup> This addition seems necessary in scribes, for *ces*.  
order to make the meaning clear.



**Note from the Record.**

De Banco Roll 195a, Mich. 6 Edw. II., membr. 364 recto. Southampton.  
Written by Burnedisshes.

Alianora que fuit vxor Mathei filii Iohannis per Matheum de Buketone attornatum suum petit uersus Magistrum Gilbertum Louel quem Philippus de Esteneye et Alicia vxor eius vocauerunt ad warantum et qui eis warantizauit terciam partem manerii de Esteneye cum pertinenciis vt dotem suam etc.

Et Magister Gilbertus per Galfredum de Tychemersshe attornatum suum venit Et alias vocauit inde ad warantum Philippum filium Philippi de Esteneye qui modo venit per sum(monicionem) per Robertum Malemeyns attornatum suum Et ei war(antizat) Et dicit quod predicta Alianora non debet ir.de dotem habere. Quia dicit quod Idem Philippus filius Philippi alias scilicet die sabbati in vigilia sancti Iacobi apostoli coram Gilberto de Roubery et Roberto Malet Iusticiariis ad placita Regis apud Far(e)ham in Comitatu predicto anno Regni Regis E patris domini Regis nunc vicesimo secundo arrain(auit) quandam assisam noue disseisine uersus predictum Matheum quondam virum etc. et alios etc. de predicto manerio per quam assisam conuictum fuit quod predictus Matheus quondam vir etc. iniuste etc. disseisiuit ipsum Philippum de predicto manerio et pretextu cuius assise Idem Philippus per iudicium eiusdem Curie Regis predictum manerium recuperauit uersus predictum Matheum et hoc paratus est verificare per recordum rotulorum predictorum Iusticiariorum de tempore predicto vnde petit iudicium si accio eidem Alianore competere possit ad dotem inde petendam etc.

Et Alianora dicit quod ipsa ab accione dotis precludi non debet in hac parte etc. Quia dicit quod predictus Philippus nunquam arrain(auit) predictam Assisam uersus predictum Matheum de predicto Manerio sicut Idem Philippus dicit Et de hoc ponit se super recordum rotulorum predictorum Iusticiariorum de tempore predicto.

Et Philippus similiter.

Ideo mandatum est predicto Gilberto de Roubery Iusticiario etc. quod scrutatis rotulis suis de tempore predicto transcriptum recordi et processus assise predicte si que inuenerit mittat hic a die sancti Hillarii in xv dies distincte et aperte sub sigillo suo etc.

Idem dies datus est partibus predictis hic in banco etc.

Ad quem diem predictus Gilbertus non misit breue nec recordum Ideo sicut prius mandatum est predicto Gilberto quod scrutatis rotulis suis de tempore predicto transcriptum recordi et processus assise predicte si que etc.

## Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 364 recto. Southampton.  
Written by Burnedisshē.

Eleanor widow of Matthew the son of John, by Matthew of Buketone her attorney, demands against Master Gilbert Louel,<sup>1</sup> whom Philip of Esteneye and Alice his wife vouched to warranty, and who warranted them, a third part of the manor of Esteneye with the appurtenances as her dower etc.<sup>2</sup>

And Master Gilbert comes by Geoffrey of Tychemersshe, his attorney. And before now he vouched to warranty thereof Philip the son of Philip of Esteneye, who now comes upon summons by Robert Malemeyns, his attorney, and warrants him, and says that the said Eleanor ought not to have thereof dower. For he says that the same Philip the son of Philip before now, to wit, on Saturday, the eve of the feast of St. James the Apostle, before Gilbert of Roubery and Robert Malet, Justices of the King's pleas, at Fareham in the said county, in the twenty-second year of the reign of King Edward father of our Lord the present King,<sup>3</sup> did arraign against the said Matthew late husband etc., and others etc., an assize of novel disseisin of the said manor, by which assize it was proved<sup>4</sup> that the said Matthew late husband etc. had unjustly etc. disseised the said Philip of the said manor; by reason of that assize the said Philip by judgment of the said King's Court did recover the said manor against the said Matthew. And this he (Philip) is ready to aver by the record of the rolls of the aforesaid Justices from the said time, and therefore he demands judgment whether an action can lie for the said Eleanor to demand thereof her dower etc.

And Eleanor says that she ought not to be precluded from an action of dower in this case etc. For she says that the said Philip did never arraign the said assize against the said Matthew for the said manor, as the said Philip alleges. And of this she puts herself upon the record of the rolls of the said Justices from the said time.

And Philip does the like.

Therefore the said Gilbert of Roubery, Justice etc., was ordered that having searched his rolls from the said time he do send here, on the quindene of St. Hilary, distinctly and openly under his seal etc., a transcript of the record and process of the said assize, if he shall have found any.

The same day was given to the said parties here in the Bench.

On which day the said Gilbert has not sent either the writ or the record; therefore the said Gilbert was ordered *sicut prius* that having searched his rolls from the said time he do send here, in three weeks from Easter, distinctly

<sup>1</sup> Probably the feoffee in a settlement of the manor upon Philip and Alice, which was made in 1308 (*V.C.H. Hants*, iii, 195).

<sup>2</sup> The manor was taken into the King's hands in 1312, on the ground that Philip had usurped the lordship (*V.C.H. Hants*, loc. cit.; *Rot. Orig. Abbrev.* i, 201).

<sup>3</sup> Gilbert of Roubery was appointed

to the King's Bench in that year (*Foss. Judges*, ii, 294), and was removed into the Common Pleas March 10, 1316 (*ibid.*).

<sup>4</sup> The more exact translation, 'convicted' in an intransitive sense, would perhaps be justifiable because it preserves the non-committal sense of 'convictum fuit' as to the finding of the assize.



**Note from the Record**—*continued.*

mittat hic a die Pasche in tres septimanas etc. distincte et aperte sub sigillo suo etc.

Idem dies datus est partibus predictis per attornatos suos hic in banco etc.

Postea ad diem illum scilicet a die Pasche in tres septimanas anno regni Regis nunc sexto venerunt tam predicta Alianora quam predictus Philippus filius Philippi per attornatos suos.

Et super hoc predictus Gilbertus misit hic recordum assise predictae capte coram domino Edwardo Rege patre die et anno supradictis etc. in quo continetur quod predictus Matheus quondam vir etc. implacitando<sup>1</sup> ad assisam predictam dixit quod ipse nichil habuit nec aliquid clam(auit) in predicto Manerio nisi custodiam tantum vsque ad legitimam etatem predicti Philippi etc. et per quam assisam conuictum fuit quod predictus Matheus iniuste etc. disseisiuit predictum Philippum de predicto manerio etc.

Ideo consideratum est quod predicta Alianora nichil capiat per breue suum set sit in misericordia pro falso clam(io) etc. Et Philippus et alii inde sine die etc.

Et sciendum quod tenor recordi missi hic per predictum Gilbertum de Roubyri talis est.

Assisa<sup>2</sup> capta coram domino Rege apud Farham die sabbati in vigilia sancti Iacobi apostoli anno regni ipsius Regis Edwardi XXII et missa coram Iusticiariis domini Regis de banco per breue.

Assisa venit recognitura si Margareta la Mahewe Matheus filius Iohannis et Iohannes Flauel iniuste etc. disseisiuerunt Philippum filium Philippi de Esteney de libero tenemento suo in Esteney post primam etc. Et vnde queritur quod disseisiuerunt eum de Manerio de Esteney cum pertinentiis etc.

Et Iohannes venit. et predictus Matheus non venit nec fuit attachiatus eo quod non fuit inuentus set predictus Iohannes respond(et) pro eo tanquam eius balliuus. et similiter predicta Margareta per quendam Nicholaum balliuum suum venit.

Et Iohannes tanquam tenens predicta tenementa dicit quod nichil habet nec aliquid clamat in eisdem nisi custodiam eorundem tenementorum vsque ad legitimam etatem predicti Philippi ex dimissione predicti Mathei filii Iohannis. et pro predicto Matheo dicit quod quidam Philippus pater predicti Philippi tenuit de ipso Matheo predicta tenementa per seruicium militare, et idem Philippus in homagio suo inde obiit, post cuius mortem idem Matheus predicta tenementa in manum suam seisiuit racione minoris etatis predicti Philippi qui nunc queritur, infra etatem existentis nomine custodie absque aliqua iniuria aut diss(eisin)a alicui inde facienda. Preterea dicit quod ipse habet dominium predictum ten(endum) ex dimissione domini Regis ad

<sup>1</sup> *Corr.* in placitando.

<sup>2</sup> This transcript is in much closer writing.

**Note from the Record**—*continued.*

and openly under his seal etc., a transcript of the record and process of the said assize if (he shall have found) any etc.

The same day was given to the said parties by their attorneys here in the Bench etc.

Afterwards on that day, to wit, in three weeks from Easter in the sixth year of the reign of the present King, there came, by their attorneys, as well the said Eleanor as the said Philip the son of Philip.

And thereupon the said Gilbert has sent here the record of the said assize which had been taken before Lord Edward the King, the father, on the said day and in the said year etc., in which record it is contained that the said Matthew, late husband etc., in pleading to the said assize did say that he had nothing and claimed nothing in the said manor, save only the wardship until the legal age of the said Philip etc.,—and that by that assize it was proved that the said Matthew had unjustly etc. disseised the said Philip of the said manor etc.

Therefore it was considered that the said Eleanor should take nothing by her writ, but that she should be in mercy for (her) false claim etc. And Philip and the others hence without a day etc.

And be it known that the tenor of the record sent here by the said Gilbert of Roubyri is as follows :

<sup>1</sup>ASSIZE TAKEN BEFORE OUR LORD THE KING AT FARHAM ON SATURDAY THE EVE OF ST. JAMES THE APOSTLE IN THE TWENTY-SECOND YEAR OF THE REIGN OF THE SAID KING EDWARD, AND SENT BEFORE OUR LORD THE KING'S JUSTICES OF THE BENCH BY A WRIT.<sup>1</sup>

An assize comes to find whether Margaret la Mahewe, Matthew the son of John, and John Flauel did unjustly etc. disseise Philip the son of Philip of Esteney of his freehold in Esteney since the first etc. And whereof he complains that they disseised him of the manor of Esteney with the appurtenances etc.

And John comes. And the said Matthew has not come, neither has he been attached, for he has not been found. But the said John answers for him as his bailiff. And the said Margaret likewise comes by one Nicolas, her bailiff.

And John, as tenant of the said tenements, says that he has nothing and claims nothing in them save the wardship of the said tenements until the legal age of the said Philip, by the lease of the said Matthew the son of John. And for the said Matthew he says that one Philip father of the said Philip held the said tenements from the said Matthew by knight service, and the said Philip died in his homage thereof, and after his death the said Matthew seised the said tenements into his hand by reason of the non-age of the said Philip who now complains, and who was below age, in the name of wardship without doing thereof any wrong or disseisin to anyone. Moreover, he says that he himself has the said lordship to be held, by the lease of our Lord the

<sup>1-1</sup> The record has this heading as a part of the text without making it a head-note.



**Note from the Record**—*continued.*

terminum vite sue tantum, et quod idem dominium post mortem suam ad dominum Regem reuerti debet, et petit quo ad hoc pro statu domini Regis saluando, quod Curia ista ad hoc habeat respectum etc.

Et predictus balliuus predictae Margarete dicit quod ipsa nullam iniuriam fecit aut diss(eisin)am nec aliquid clamat in eodem Manerio nisi dominium tantum. eo quod Manerium illud de ipsa tenetur per seruicium vnus paris calcarium deauratorum aut sex denariorum per annum pro omni seruicio, propter quod predicta Margareta post mortem predicti Philippi filii Petri (*sic*) tenentis sui seisiuit Manerium illud vt capitalis domina nomine simplicis sesi(n)e saluo iure cuiuslibet absque aliqua Iniuria alicui inde facienda. et de hoc ponit se super assisam etc.

Et predictus Philippus filius Philippi dicit quod ipse est infra etatem nec se cognoscit in lege terre nec scit placitare, set dicit quod ipse fuit seisitus de predictis tenementis vt de libero tenemento suo quousque predicta Margareta et alii ipsum inde iniuste etc. disseisiuerunt sicut queritur et hoc petit quod inquiratur per assisam etc.

Iur(atores) dicunt super sacramentum suum quod tempore Regis Iohannis aui domini Regis nunc quidam Robertus de Corcy tenuit Manerium de Werblyntone cum pertinenciis suis de ipso domino Rege in Capite, de cuius pertinenciis et cuius menbrum Manerium de Esteny tunc fuit, et idem Robertus orta guerra inter dictum dominum Regem et Regem Francie adiit Regi (*sic*) Francie et adhesit parti sui contra dominum Regem Anglie. propter quod idem Rex Anglie seisiuit in manum suam dictum manerium de Werblyntone integre cum omnibus pertinenciis suis vt eschaetam suam, eo quod predictus Robertus inimicus suus et contra pacem suam deuenit. Et postea idem Rex concessit dictum Manerium integre cuidam Matheo filio hereb(e)rti, tenendum ad terminum vite sue tantum. Reddendo inde quoddam certum per annum. Qui quidem Matheus sic illud tenuit et inde obiit seisitus. Post cuius mortem dominus Henricus Rex pater domini Regis nunc per ministros et balliuos suos seisiuit Manerium illud integre in manum ipsius domini Regis. Ita quod postea quidam H(er)bertus filius et heres predicti Mathei accessit ad dominum Regem. et tantum fecit erga eum, quod ipse dominus Henricus Rex concessit

**Note from the Record**—*continued*.

King, for the term of his life only, and that after his death the said lordship ought to revert to our Lord the King. And he prays that on this point this Court may have regard to that, in order to save the estate of our Lord the King etc.<sup>1</sup>

And the said bailiff of the said Margaret says that she did no wrong or disseisin, neither does she claim anything in the said manor save the lordship only, because that manor is held from her by the service of one pair of gilt spurs or six pence a year for all services, wherefore the said Margaret after the death of the said Philip the son of Peter, her tenant, did seise that manor as the chief lady, in the name of simple seisin, saving the rights of everyone, without doing thereof any wrong to anybody. And of this she puts herself upon the assize.

And the said Philip the son of Philip says that he himself is below age, neither does he understand<sup>2</sup> the law of the land, nor does he know<sup>3</sup> how to plead, but he says that he had himself been seised of the said tenements as of his freehold until the said Margaret and the others did unjustly etc. disseise him thereof as he complains. And he prays that this be inquired by the assize etc.

The jurors say upon their oath that in the time of King John, grandfather of our Lord the present King, one Robert of Corcy held in chief from the said Lord the King the manor of Warblington with appurtenances, the manor of Esteny being an appurtenance and a member of the above. And a war having broken out between the said Lord the King and the King of France, the said Robert went to the King of France and became adherent to his side against our Lord the King of England. Therefore the said King of England seised the said manor of Warblington entirely with all its appurtenances into his hand as his escheat,<sup>4</sup> because the said Robert had become his enemy and against his peace.<sup>5</sup> And afterwards the same King granted the said manor entirely to one Matthew the son of Herbert,<sup>6</sup> to be held for the term of his life only, rendering thereof something certain<sup>7</sup> every year; and that Matthew did thus hold it, and died thereof seised. After his death, Lord Henry the King, father of our Lord the present King, did by his ministers and bailiffs entirely seise that manor into his, the said Lord the King's, hand. So that afterwards one Herbert, son and heir of the said Matthew, approached our Lord the King and prevailed upon the King that the said Lord Henry the King granted<sup>8</sup> the

<sup>1</sup> See Case 1. It seems likely that this plea, if it was put forward as tentatively as appears from the record, was only intended to delay the proceedings. For if the defendant had had good grounds to show that the King's interests might be prejudiced by the plaintiff's recovery, he would have prayed aid of the King at once.

<sup>2</sup> *Or*, find his way in.

<sup>3</sup> N.E.D. v. 746 col. 2. *s.v.* Know, iv. 12.

<sup>4</sup> See *Testa de Nevill*, 237; *V.C.H. Hants*, iii, 134.

<sup>5</sup> An interesting precedent for the Statute of Treasons—*cp.* especially the wording of the verdict which seems to testify to the application of a well-established legal rule.

<sup>6</sup> Sheriff of Sussex.

<sup>7</sup> N.E.D. ii. 235 col. 1, *s.v.* 'Certain,' B. ii. 4.

<sup>8</sup> *Cal. Close* 1227-31, p. 477.



Note from the Record—*continued.*

predictum Manerium integre cum omnibus pertinenciis suis vt predictum est ipsi He(r)berto, tenendum sibi et heredibus suis de domino Rege et heredibus suis set ignorant per quod seruicium, per quam concessionem : idem He(r)bertus obiit inde seisitus in dominico suo vt de feodo et sine herede de se. Post cuius mortem intrauit in eodem Manerio quidam Petrus vt frater et heres ipsius He(r)b(er)ti et illud tenuit de ipso domino Rege. per eadem seruicia per que frater suus illud prius tenuit, Et idem Petrus postea volens promoci- onem cuiusdam Florencie de Dageny dedit eidem quoddam Manerium suum de Yatesbyri in Comitatu Wylt(escire), tenendum ipsi Florencie et heredibus suis de ipso Petro et heredibus suis per seruicium vnus paris calcarium deauratorum aut sex denariorum per annum pro omni seruicio, et obligauit se ad War(antiam). Et postea postquam ipsa Florencia sic fuit in seisina dicti Manerii de Yatesbyry : implacitata fuit de eodem Manerio in Curia Regis per quendam. Ita quod ipsa Florencia vocauit inde ad war(antum) predictum Petrum, qui per iudicium Curie illud Manerium deyatesbyri amisit, per quod consideratum fuit quod petens recuperaret seisinam suam predicti Manerii uersus predictam Florenciam, et quod eadem Florencia haberet de terra predicti Petri ad valenciam etc. ratione cuius iudicii : idem Petrus assignauit ipsi Florencie predictum Manerium de Esteny cum perti- nenciis tenendum sibi et heredibus suis. loco valencie dicti Manerii de yates- bury, et per eadem seruicia per que ipsa Florencia prius tenuerat Manerium de yatesbury. Et dicunt quod idem Manerium de Esteny toto tempore antea fuit membrum et de pertinenciis predicti Manerii de Warblyntone. Postea eadem Florencia postquam fuit in seisina dicti Manerii de Esteny dedit idem Manerium cum pertinenciis quibusdam Regin(aldo) filio suo antenato et predicto Philippo fratri (*sic*) predicti Philippi qui modo queritur, fil(iis) ipsius Florencie tenendum ipsis Regin(aldo) et Philippo et heredibus suis de predicto Petro et heredibus suis per predictum seruicium, per quod ipsa prius tenuit, per quod donum predictus Regin(aldus) continuauit seisinam suam toto tempore suo et inde obiit seisitus. post cuius mortem predictus Philippus pater (*sic*) etc. intrauit in eodem manerio de Esteney iuxta formam predicti doni, Et postquam idem Philippus sic fuit inde seisitus : quidam

**Note from the Record**—*continued*.

said manor entirely with all its appurtenances, as has been said above, to the said Herbert, to be held to him and to his heirs from our Lord the King and his heirs.<sup>1</sup> But they (the jurors) do not know by what service (the manor was to be held). And the said Herbert died seised thereof by that grant, in his demesne as of fee, and without an heir of his body. And after his death there entered into the said manor one Peter as brother and heir of the said Herbert, and held it from the same Lord the King by the same services by which his brother had previously held it.<sup>2</sup> And afterwards the said Peter, desiring the promotion of one Florence of Dageny, gave her a manor of his, (to wit, the manor) of Yatesbury in the County of Wiltshire, to be held to her, Florence, and to her heirs from the said Peter and his heirs, by the service of one pair of gilt spurs or of six pence a year for all services, and he bound himself to warranty. And afterwards, after the said Florence had thus been in the seisin of the said manor of Yatesbury, she was impleaded by someone for the same manor in the King's Court, so that the said Florence vouched thereof to warranty the said Peter, who did by judgment of the Court lose that manor of Yatesbury. Therefore it was considered that the demandant should recover his seisin of the said manor against the said Florence, and that Florence should have of the land of the said Peter to the value etc. By reason of that judgment the said Peter assigned to the said Florence the said manor of Esteny with the appurtenances,<sup>3</sup> to be held to her and to her heirs in lieu of the value of the said manor of Yatesbury, and by the same services by which the said Florence had formerly held the manor of Yatesbury. And they (the jurors) say that the same manor of Esteny had all the time before then been a member and of the appurtenances of the said manor of Warblington. Afterwards the said Florence, after she had been in the seisin of the said manor of Esteny, gave the same manor with the appurtenances to one Reginald her elder son and to the said Philip father<sup>4</sup> of the said Philip who now complains, sons of her the said Florence, to be held to them, Reginald and Philip, and to their heirs from the said Peter, and his heirs by the said service, by which she had held it formerly.<sup>5</sup> And by that gift the said Reginald continued his seisin all his time and died thereof seised; and after his death the said Philip father etc. entered into the said manor of Esteney, according to the form of the said gift. And after the same Philip had thus been

<sup>1</sup> The manor was entailed on Herbert and his heirs, failing the restoration of Robert de Courci (*V.C.H. Hants*, iii, 135).

<sup>2</sup> Peter did homage for his lands in 1245 (*ibid.*). He was succeeded in Warblington by his brother John, who paid relief for the inheritance in 1255 (*ibid. Excerpta e Rot. Fin.* i, 432; ii, 205; *Misc. inq. file 15, no. 13*), and seems to have been dead by July 1269 (*V.C.H. Hants, loc. cit.*). John's widow Margaret was holding Warblington in dower in October 1287, with remainder

to Matthew son of John Ude (*Cal. Pat.* 1281-92, p. 280), who had quitclaimed his right to Henry III in return for a life grant of the manor.

<sup>3</sup> In 1313 Peter was said to have permitted his tenant, Philip son of Peter of Esteney, to exercise manorial rights (*V.C.H. Hants, loc. cit.*): this Philip was no doubt the son of Florence of Dageny mentioned below, and father of the tenant in this case.

<sup>4</sup> This is the obvious meaning; 'brother' is a clerical mistake.

<sup>5</sup> *I.e.* until the time of the grant.



## Note from the Record—continued.

Nicholaus Martyn in cuius custodia predictus Matheus filius Iohannis tunc fuit ratione minoris etatis sue : eiecit ipsum Philippum de eodem manerio. propter quod idem Philippus coram Rege apud Wynton(iam) arrain(auit) assisam noue disseisine uersus predictum Nicholaum de eodem Manerio et illud ibidem per recognicionem eiusdem assise recuperauit, et postea illud tenuit toto tempore suo et inde obiit seisitus in dominico suo vt de feodo Post cuius mortem predictus Philippus qui modo queritur et executores predicti Philippi patris sui nomine ipsius Philippi filii in eodem Manerio intrauerunt, affirmando Manerium illud esse Ius et hereditatem ipsius Philippi, et ibidem moram fecerunt per vnam noctam (*sic*) et vnum diem vt in Iure et hereditate ipsius heredis, Et postea ijdem executores cum predicto Philippo filio etc. inde recesserunt, et ipsum heredem apud Portesmut(h)e miserunt. et dicunt quod postea quidam<sup>1</sup> de la Pomeray balliuus cuiusdam Margarete la Mahewe, intendens predictam dominam suam habere Ius in custodia predicti Manerii, seisiuit Manerium illud in manum domine sue et ad corpus predicti heredis accessit et ipsum heredem cepit et domine sue transmisit, que heredem illum admisit et tenuit quousque predictus Matheus filius Iohannis postea hoc percipiens <sup>2</sup>vi et armis<sup>2</sup> ad predictum Manerium accessit, et tam homines predicti heredis quam predictae domine, in dicto Manerio existentes vi et armis eiecit, et tenementum illud in manum suam cepit, et postea idem Manerium postquam per duos annos illud tenuerat : dicto Iohanni Flauel dimisit qui sic illud tenet.

Quesiti si predictus Philippus pater predicti heredis aut aliquis antecessorum suorum vncquam inde homagium predicto Matheo aut antecessoribus suis fecit, aut in homagio ipsius Mathei fuit et obiit aut aliq(u)a seruic(ia) militar(ia) eis inde fecerunt : dicunt quod non. nisi tantum modo predictum seruicium vnus paris calcarium deauratorum aut sex denariorum per annum pro omni seruicio, Et quod predictus Matheus non fuit seisitus de aliquo homagio aut seruicio militari per manus predicti Philippi patris etc. set quod idem Philippus tenuit tenementa predicta per certa seruicia vt predictum est : et sic de eisdem obiit seisitus. Et quod predictus heres post mortem suam intrauit in eisdem vt filius ipsius Philippi et heres. et fuit inde in seisina vt de libero tenemento et hereditate sua quousque predictus Matheus vi et armis ipsum inde eiecit et iniuste disseisiuit sicut queritur ad dampnum suum quater viginti librarum.

Ideo consideratum est quod predictus Philippus recuperet inde seisinam suam per visum recogn(itorum) et dampna sua predicta. et Matheus capiatur et committatur Gaole etc. et similiter idem Philippus in misericordia pro falso clam(io) uersus alios.

<sup>1</sup> Here a blank space is left for a word.

<sup>2-2</sup> Interlined.

**Note from the Record**—*continued*.

seised thereof, one Nicolas Martyn,<sup>1</sup> in whose wardship the said Matthew the son of John was at that time by reason of his non-age, ejected the said Philip from the said manor. Therefore the said Philip arraigned before the King at Winchester an assize of novel disseisin against the said Nicolas for the said manor, and recovered it there by recognition of the same assize; and afterwards he held it all his time and died seised thereof in his demesne as of fee. And after his death the said Philip who now complains, and the executors of the said Philip, his father, in the name of the said Philip the son, entered into the same manor, affirming that manor to be the right and inheritance of the said Philip; and they stayed there one night and one day as in the right and inheritance of the said heir. And afterwards the said executors with the said Philip, son etc., left there and sent the said heir to Portsmouth. And they (the jurors) say that afterwards one<sup>2</sup> de la Pomeray, bailiff of one Margaret la Mahewe, meaning<sup>3</sup> his said lady<sup>4</sup> to have a right in the wardship of the said manor, seised that manor into his lady's hand and approached the body of the said heir and took the same heir and sent him to his lady, who admitted that heir and held him until afterwards<sup>5</sup> the said Matthew the son of John, seeing this, did go with force and arms to the said manor and with force and arms ejected as well the men of the said heir as those of the said lady, who were on the said manor; and he took that tenement into his hand and afterwards, having kept the same manor for two years, leased it to the said John Flauel who thus now holds it.

Upon being asked whether the said Philip, father of the said heir, or any-one of his ancestors has ever done homage thereof to the said Matthew or to his ancestors, or has been and has died in the homage of the said Matthew, or whether they have done them any knight's services thereof: they (the jurors) say no, save only the said service of one pair of gilt spurs or six pence a year for all services. And (they say) that the said Matthew was not seised of any homage or knight's service by the hands of the said Philip the father etc., but that the same Philip held the said tenements by certain services, as was said above, and died thus thereof seised. And that the said heir entered into the same after his death, as the said Philip's son and heir; and was seised thereof as of his freehold and inheritance until the said Matthew with force and arms ejected and unjustly disseised him thereof, as he complains, to his damage of four score pounds.

Therefore it was considered that the said Philip should recover his seisin<sup>6</sup> thereof by the view of the recognitors, and also his said damages. And let Matthew be taken and committed to gaol etc. And likewise the said Philip in mercy for his false claim against the others.

<sup>1</sup> Nicholas Martin was guardian of the manor of Warblington in July 1269 (*V.C.H. Hants, loc. cit.*).

<sup>2</sup> No Christian name is given; see note 1 on the opposite page.

<sup>3</sup> The several senses of 'to mean' seem to match those of *intendere*.

<sup>4</sup> Or, 'mistress' (?)

<sup>5</sup> In the Latin text 'afterwards' stands immediately before 'seeing.'

<sup>6</sup> The tenements were restored to Philip in 1314 (*Cal. Close* 1313-18, p. 52), and were held by Alice in 1316 in accordance with the settlement of 1308 (*Feudal Aids*, ii. 329; *V.C.H. Hants*, iii. 195).



## Note from the Record—continued.

Perdonatur misericordia Philippi quia infra etatem.

Postea dominus Rex apud Lond(oniam) ad parliamentum suum post festum sancti Michaelis perdonavit predicto Matheo inprisonamentum predictum et redempcionem.

Ideo ipse inde quietus etc.

Postea<sup>1</sup> a die sancti Martini in xv dies anno Regis nunc septimo dominus Rex mandavit breue suum Willelmo de Bereford Iusticiario suo hic quod record(um et) processum loquere predicte mitteret in Cancellaria etc.

Et ei mittitur per predictum Philippum etc.

12. ANON.<sup>2</sup>

Douwer pur la s(econd)e femme en fee taille. *simile prius scilicet termino Trinitatis anno quarto.*

Vne femme porta soun bref de douwere vers vn Enfaunt deinz age en la garde du Counte de Gloucestre et vers le Counte cum gardeyn. Et fut le cas tel qe la s(econd)e femme en fee taille porta soun bref vers lissue la primere femme.

*Hunt.* pur le Counte dit. qil fust prest a rendre douwere si ele deit douwer auer.

*Frisk.* A la commune ley le baron en fee taille pout aliener. et lissue saunz rescuuerir. et sa femme douwer. et ele nest pas vste par statut iugement etc.

*Hing. iustice.* Par statut le secund baron ne tendra poynt par la ley dengleterre. ergo ne la femme.

*Wesc.* Vous ne truet my qe la s(econd)e femme auant statut a la commune ley fut barre etc.

*Herle.* Si ele seroit douwe ceo seroit encountre statut qe dit qe meynttenaunt apres la mort ceus a qi la taille descent. qe les tenemenz

<sup>1</sup> Here begins again the record of the dower case of 6 Edw. II.

<sup>2</sup> From *G.*

**Note from the Record**—*continued*.

Philip's mercy is pardoned because he is below age.

Afterwards our Lord the King at London at his parliament after Michaelmas pardoned to the said Matthew the said imprisonment and ransom. Therefore he (is) thereof quit etc.

Afterwards<sup>1</sup> on the quindene of Martinmas in the seventh year of the present King, our Lord the King sent his writ to William of Bereford, his Justice here, that he send the record and process of the said cause into the Chancery etc.

And it is sent to him by the said Philip etc.<sup>2</sup>

## 12. ANON.

Dower for the second wife (of a tenant) in fee tail. A similar case before, to wit in Trinity Term of the fourth year.<sup>3</sup>

A woman brought her writ of dower against an infant within age, in the wardship of the Earl of Gloucester, and against the Earl, as guardian. And the facts of the case came to this, that the second wife (of a tenant) in fee tail brought her writ against the issue of the first wife.

*Huntingdon* for the Earl said that he was willing to render dower if she ought to have dower.

*Friskenev*. At the common law the husband (who holds) in fee tail can alienate and the issue (remains) without recovery and his wife (will have) dower. And she is not ousted by statute. Judgment etc.

INGE J.<sup>4</sup> By statute the second husband shall not hold by the law of England.<sup>5</sup> It follows that neither shall the wife (have dower).

*Westcote*. You do not find that the second wife was barred before the statute at the common law etc.

*Herle*. If she were endowed that would be against the statute which says that immediately after the death of those to whom the tail descends, the tenements in their entirety shall descend to the heir,

<sup>1</sup> Here begins again the record of the dower case of 6 Edw. II.

<sup>2</sup> See also *Cal. Close* 1313-18, pp. 52, 77.

<sup>3</sup> See Y.B. 4 E. 2 (S.-S), vol. vi. 161-167.

<sup>4</sup> The patent of Inge's appointment to the Common Pleas is dated Sept. 23,

1314, but a fine is said to have been levied before him in the previous year (Foss, *Judges*, iii, 269), and it is clear from the passage in our case that he sometimes sat on the Bench before his appointment.

<sup>5</sup> Statute of Westminster 2, c. 1.



desc(endront) enterement al heir. ou par defaute dissee retourneront au doner. Et si ele fut douwe ensi ne descender(ont) my les tenemenz en la forme qe statut donne.

*Frisk.* Statut restreint qe le secund ne tendra pas. mes il ne restreint my qe la s(econde) femme nauera douwer.

*Berr.* Si la femme auereit douwer. y couendreit qe le baroun fut seisi soul cum de fee. issint ne fut nent qe si le heir porta son bref de formedoun en le descend(ere) sanz nomer lun et lautre a ques le doun se fyt. il ne vst rescuueri ren pur ceo qil auoient ouele estat solom la taille. issint qe lun ne lautre nauyent fee soul.

*Frisk.* Auaunt statut si le heir porta le mortdauncestre. il recuuerast. pur ceo qil nauoit nul autre bref done pur le heir. et il poyt auerer qe son auncestre morust seisi en soun demesne cum de fee.

*Berr.* Oil fee tel quel. mes ieo vy en tel cas. ou le bref se abati apres lassise passe. et fut le cas tel. qune assise de mortdauncestre fut porte en pais deuaunt sire Ion Louetot et fut dit qe les tenemenz furrent donez en forme taille. issint qe cel heir ne porreit le bref vser. *et hoc non obstante* lassise fut prise qe dit qe les tenemenz furrent donez a son pere. et a sa mere en forme taille etc. *non obstante* iugement se fyt. qe le heir rescuery. par qei le tenant suy de fere venir le record deuaunt sire R. de Hengh. en banc le Rey. et pur ceo qil truua qe les tenemenz furrent en fee taille. si ag(arda) qil ne prist ren par son bref. et reuersa le iugement.

*Hing. iustice.* La ou vous dites qe le mortdauncestre fut done deuaunt statut. ieo dy qe noun. eynz fut le bref de forme de doun en le desc(endere). mes auaunt statut. la ou le baroun et la femme alierent par lagar(antie) les heirz furrent barrez. mes statut lor restreint en deus poinz, cest a sauier a ceus a qi la taille se fyt qil ne pout alierer et sil alient qe lyssue ne sera nent barre. si ren ly vnt descendu.

*Et sic pendet.*

or for default of issue shall return to the donor. And if she were endowed thus the tenements would not descend in the form which the statute gives.

*Friskeney.* The statute restrains the second (husband) from holding but it does not restrain the second wife from having dower.

BEREFORD C.J. If the wife were to have<sup>1</sup> dower, it would be necessary that the husband had been seised sole as of fee. He has not been so. For if the heir had brought his writ of formedon in descender without naming him(self)<sup>2</sup> and the other to whom the gift was made, he would have recovered nothing because they had (each)<sup>2</sup> an equal estate according to the tail, so that neither the one nor the other had the fee by himself.

*Friskeney.* If the heir (had) brought the mortd'ancestor before the statute, he would recover because there was no other writ given to the heir. And he can aver that his ancestor died seised in his demense as of fee.

BEREFORD C.J. Yes, fee such as (it was). But I have seen that in such a case a writ was abated after the assize had passed. And the case was such, (to wit) that an assize of mortd'ancestor was brought in the country before Sir John Lovetot,<sup>3</sup> and it was said that the tenements were given in tail, so that the heir could not use the writ. And nevertheless the assize was taken, and (they) said that the tenements were given to his father and his mother in tail etc. Judgment was given, however, that the heir should recover, wherefore the tenant sued to let the record come before Sir Ralph of Hengham in(to) the King's Bench. And because (Sir Ralph) found that the tenements were (held) in fee tail, he awarded that (the demandant) should take nothing by his writ, and reversed the judgment (of Sir John).

INGE J. Whereas you say that the mortd'ancestor was given before the statute, I say that (it was) not, but (what was given) was the writ of formedon in descender. But before the statute where the husband and the wife alienated with warranty the heirs were barred. The statute, however, restrains them in two points, to wit, as to those to whom the (gift in) tail was made, they cannot alienate, and if they do alienate, the issue shall not be barred if nothing descend to him.

And thus the cause is pending.

<sup>1</sup> *Literally* : had.

<sup>2</sup> This addition seems necessary to make the passage intelligible.

<sup>3</sup> Sir John Lovetot was raised to the Bench of Common Pleas in 1275.

In 1289 he was removed on charges of extortion, fined 3000 marks, and imprisoned in the Tower. He died before November 5, 1294 (Foss, *Judges*, iii. 123).



13. ASMORE *v.* BRIDLINGTON (PRIOR OF).<sup>1</sup>

<sup>2</sup>Dowere de vne rente charge qe fut grante al auncestre le baroun la femme demaundante et a ces heirs issi qe durant le nounage des heirs La rente serreit esteynte, ou agarde fut qe la femme rescouerit, mes qele ne preyt rien tanke al age Le heir sun baroun.<sup>2</sup>

Margerie qe fut la femme <sup>3</sup>Willem de Asmore<sup>3</sup> porta soun bref de douwer deuers le Prior de Brydelynton<sup>4</sup> et demaunda la terce partie de xv. livres de rente dunt son baron fut seisi etc.

*Pass.* Nous demaundoms la veuwe.

*Berr.* De qei.

*Pass.* Des tenemenz dunt la rente yst.

*Toud.* Nostre baron morust seisi de <sup>5</sup>la rente iugement etc.<sup>5</sup>

*Denom.* Autrement ensuereyt grant duresce. qe put estre qe plusurs tenemenz sunt chargez de ceste rente par qei etc. ou il couent qe vous ascertet la partie le quel vous demaundet rente seruiz. ou rente charge.

*Toud.* Statut vous oste de la veuwe pur ceo qe nostre baron morust seisi.

*Berr.* Dites outre.

*Denom.* Vn Thomas pere <sup>6</sup>Willem de Asmere<sup>6</sup> et Maut(e) sa femme conusserent vn mees et iiij. acres de tere a vn G. predecessour mesme cesti Prior pur qele conissaunce. le Prior granta a Thomas et M. et lor heirz. xv. li(vres) par an. a lor prochein issue. qe la Rente fut esteynt durant le noun age le heir. par vne fin. et mist auant la fyn. et vous dioms qe ceste Margerie esteit la femme le heir Thomas de qi mort. et le heir est deinz age par qei nous demaundoms iugement si en countre la fin durant le noun age le heir etc.

*Toud.* Nous vous dioms qe nostre baron morust seisi de mesme la rente cum de fee simple par qei accioun apres sa mort. nous acrust a demaunder douwere. iugement.

*Herle.* Vous clamet estat par vostre baron qest pryue a la fin par qei iugement si en countre la fin etc.

<sup>1</sup> From *G.* Compared with *F.* Headnote from *F.*    <sup>2-2</sup> The headnote in *G* is: Duwoer de xv. li(vres) de Rente.    <sup>3-3</sup> Willam Dalimore *F.*    <sup>4</sup> Nostre Dame de Brideltone *F.*    <sup>5-5</sup> ceste rente par qei la veuwe ne deuez auer *F.*    <sup>6-6</sup> Willam de Dalimore *F.*

13. ASMORE *v.* BRIDLINGTON (PRIOR OF).

Dower of a rent-charge which had been granted to the ancestor of the demandant's husband and to his heirs, so that during the nonage of the heirs the rent should be extinct. It was awarded that the woman should recover, but that she should take nothing until her husband's heir would come of age.

Margery wife that was of William of Asmore brought her writ of dower against the prior of Bridlington<sup>1</sup> and demanded the third part of £15 of rent of which her husband had been seised etc.

*Passeley.* We demand the view.

BEREFORD C.J. Of what?

*Passeley.* Of the tenements from which the rent is issuing.

*Toudeby.* Our husband died seised of the rent. Judgment etc.

*Denom.* Otherwise great hardship would ensue, for it may be that several tenements are charged with this rent wherefore etc. And there you must certify the party whether you demand rent-service, or rent-charge.

*Toudeby.* The statute<sup>2</sup> ousts you from the view because our husband died seised.

BEREFORD C.J. Say over.

*Denom.* One Thomas father of William of Asmore and Maud his wife made conusance of one messuage and four acres of land to one G(eoffrey)<sup>3</sup> predecessor of this same prior, and for that conusance the prior granted to Thomas and Maud and their heirs £15 a year. (As)<sup>4</sup> to their next issue the rent was to be extinct during the nonage of the heir. (This was done) by a fine. (And he put forward the fine.) And we tell you that this Margery was the wife of the heir of Thomas of whose death (etc:<sup>3</sup>). And the heir is within age, wherefore we demand judgment whether against the fine, during the nonage of the heir etc.

*Toudeby.* We tell you that our husband died seised of this same rent as of fee simple, wherefore after his death action accrued to us to demand dower. Judgment.

*Herle.* You claim an estate by your husband who is privy to the fine. Therefore (we demand) judgment whether against the fine etc.

<sup>1</sup> Gerard of Burton, Prior 1295-1315. During this period discipline was lax, and the house was heavily in debt (*V.C.H. Yorks.* iii, 201). It was probably with a view to offerings that the Prior and Canons in 1313 stole a wonder-working image of the Virgin from the parson of Foston (*Cal. Pat.* 1313-17, pp. 60, 245). Archbishop

Greenfield, however, promptly forbade the worship of this image (*V.C.H. Yorks, loc. cit.*).

<sup>2</sup> Stat. Westm. 2, c. 48.

<sup>3</sup> Geoffrey of Nafferton, Prior 1260-95 (*V.C.H. Yorks.* iii, 202).

<sup>4</sup> This addition seems necessary to explain the passage.



*Toud.* Nous ne sumes pas heir nostre baron eynz sumes estrange a la fin. et nous uoloms auer *vt supra* et<sup>1</sup> le dreit de la Rente est descendu a. ij. fillez. la une<sup>2</sup> deinz age. etc. iugement<sup>3</sup> etc.

*Berr.* Pur ceo qe vous ne<sup>4</sup> poet dedire la fin fete par les auncestres vostre baron et<sup>5</sup> vostre baron ne fut nent partie a la fin. la quele fyn  
 Iudicium      testimoigne la rente estre esteynt durant le noun age etc. si agarde la court qe la femme recuere soun douwere mesqe ele ne prenge ren durant le noun age etc. *secundum finem*.

14. PERES v. THUSAUT.<sup>6</sup>

Dowere qe la femme le piere porta vers la femme sun fiz eyngne, la qele lya le fiz puygne a la garantye, pur ceo qe le piere dona ceux tenemenz et autres a sun fiz eygne en fee taylle, salue aly la reuercion, par qei apres sa mort le piere entra et assigna ceux tenemenz a ly en dowere.

Maude qe fut la femme Robert Peres porta sun bref de dowere uers Iohan Thusaut et Margerie sa femme etc. qe vocherent a garant Thomas le fiz R. Pieres qe vynt en court et demaunda par quei etc.

Et il diseient qil nauoyt rien forke dil dowere. M. etc. et la reuercioun fut a Thomas etc.

*Frisk.* Le dowere qe Maude demaunde est de eyne dowement qe nest le dowere Margerie ou de commune ley Maude deit auer dowere dil enter et Margerie forke des deux parties. et si ele fut garanti ele auereit dowere dil enter iugement si nous le deuoms garant(ir).

*Toud.* Depus qe vous clamez la reuercioun iugement si vous ne deuez garant(ir).

*Berr.* Ceste qe demaunde dowere fut ele la femme le piere ou la femme le fiz.

*Frisk.* Iliauoit R. le piere et R. le fiz dont R. le piere enfeffa R. le fiz dil entier dount ceux tenemenz sunt parcelle etc. a ly et a les heirs de sun corps engendres et la reuercion a ly meymes etc. et pur

<sup>1</sup> *Herle* interlined in later ink *F*.

<sup>2</sup> *Add*: est *F*.

<sup>3</sup> *Add*: si encontre *F*.

<sup>4</sup> *Om.* *F*.

<sup>5</sup> *Add*: ou *F*.

<sup>6</sup> From *F*.

*Toudeby.* We are not an heir of our husband, but are a stranger to the fine, and we will aver (he repeated his former statement). And<sup>1</sup> the right of the rent has descended to two daughters, one of them within age etc. Judgment.

BEREFORD C.J. Since you cannot deny the fine made by the ancestors of your husband nor that<sup>2</sup> your husband was a party to the fine, and the fine witnesses that the rent is extinct during the nonage etc.—this Court awards that the woman recover her dower but that she take nothing during the nonage etc. according to the fine. Judgment

#### 14. PERES *v.* THUSAUT.

Action of dower brought by the wife of the father against the wife of the elder son. The latter vouched the younger son to the warranty, because the father had given these and other tenements to his elder son in fee tail, saving to himself the reversion, and therefore after the elder son's death the father had entered and had assigned these tenements to her (the wife of the elder son) in dower.

Maud wife that was of Robert Peres brought her writ of dower against John Thusaut and Margery his wife<sup>3</sup> etc. The latter vouched to warranty Thomas the son of Robert Pieres, who came into court and asked on what ground etc.

And they (the tenants) said that they had nothing save of the dower of Margery etc. and that the reversion belonged to Thomas etc.

*Friskeney.* The dower which Maud demands is by an endowment prior to the dower of Margery, and in such a case by common law Maud ought to have dower of the whole and Margery only of the two<sup>4</sup> parts; and if she were warranted she would have dower of the whole. Judgment whether we ought to warrant her.

*Toudeby.* Judgment whether you ought not to warrant since you claim the reversion.

BEREFORD C.J. Was that one who (now) demands dower the wife of the father or the wife of the son?

*Friskeney.* There was R. the father and R. the son; R. the father enfeofed R. the son of the whole of which these tenements are parcel etc., to him and to the heirs of his body begotten, and the reversion to himself

<sup>1</sup> According to *F* this is the beginning of a statement by *Herle*, and 'And' should be omitted.

<sup>2</sup> The negative construction and the omission of *qe* give a somewhat different literal meaning, viz.: 'the husband was not a party to the fine.' Such a translation, however, seems wrong.

<sup>3</sup> John Thusaut was evidently the second husband of Margery, who had previously been married to the younger Robert Peres.

<sup>4</sup> *I.e.* the two parts remaining after the third had been assigned to Maud.



ceo qe R. lefiz morust saunz heir de sun corps engendre. Le piere entra et assigna ceux tenemenz en dowere a margerie etc. et desicom Maude est femme le piere qe de commune ley auera dowere dil enter et ceste etc. forke des ii. parties iugement si ele deiue estre guaranty. *Item* si ceux tenemenz vssent este assigne a Maude qe ore demaunde etc. viuant R. le fiz et pus apres sa mort, sa femme d(emaun)dat dowere de mesme les tenemenz, ele serra barre etc. pur ceo qe lautre fut dowe de accioun plus haut etc. par qei tut seit ele einz ele ne deit pas estre garanti.

*Toud.* Nous ne sumes pas en cas de dowere le dowere<sup>1</sup> entre piere et fiz. qe lestat qe nostre baroun auoit ceo fut par le feffement vostre piere qi heir vous estes cum estrange purchassour et sil fut en vie et fut enplede dil enter il serreit garanti dil enter et par mesme la reson nous de la terce partie etc.

*Herle.* Si nous gar(antioms) etc. dont auera Maude la terce partie dil enter et vous la terce partie dil enter. et issint ne auereyt mye le heir sun heritage solom ceo qe apent.

*Thoud.* De commune droit la femme deit auer la terce partie de touz les tenemenz qe furent a sun baroun. et vous dioms qe sun piere qi heir il est assigna a nous ceux tenemenz atenir en dowere qe nous est sauue par commune droit. et depus qe nous nauoms rien trespasse et ouesqe cel il vnt assez par descente etc. meyndre mal est qe la p(ar)te chesse sur vous.

*Herui.* Volez garantir.

*Herle.* Ne mye saunz agarde.

*Herui.* Pur ceo qe nous ne sauoms rien v(er) pur qei ele ne deit estre garrantie si agarde ceste court etc. et pur ceo qe vous contrepledastes la garantie si agarde La court qe eux tenent en pees les tenemenz. et qe Maude rescuere vers vous si vous eiez rien dil her(itage) etc. et si ceo noun uers les tenanz des tenemenz etc. et vous en La mercie etc.

<sup>1</sup> Space is left here for one short word.

(the father) etc. And because R. the son died without heir of his body begotten, the father entered and assigned these tenements in dower to Margery etc. And since Maud was<sup>1</sup> wife of the father and (as such) shall by common law have dower of the whole and that one etc. only of the two parts, judgment whether she ought to be warranted. Likewise, if these tenements had been assigned to Maud who now demands etc. in the lifetime of R. the son, and then after his death, his wife had demanded dower of these same tenements, she would have been barred etc. because the other one had been endowed by a higher act<sup>2</sup> etc. Therefore albeit that she is 'in'<sup>3</sup> she ought not to be warranted.

*Toudeby.* We are not in a case of dower<sup>4</sup> that ought to be decided as in cases<sup>4</sup> between father and son, for the estate which our husband<sup>5</sup> had was that of a stranger purchaser, by the feoffment by your father whose heir you are; and if he (our husband) had been alive and had been impleaded of the whole, he would have been warranted as to the whole. And by the same reason we (ought to be warranted) as to the third part etc.

*Herle.* If we were to warrant etc., then Maud would have a third part of the whole and you a third part of the whole, and thus the heir would not have his heritage according to what (he) ought (to have).

*Toudeby.* Of common right<sup>6</sup> the wife ought to have the third part of all the tenements that were her husband's. And we tell you that his father whose heir he is assigned to us these tenements, to hold in dower which is saved to us by common right.<sup>6</sup> And since we have trespassed in nothing and with all this they have enough by descent etc., it will be a less mischief if the burden (?) falls upon you.

STANTON J. Do you want to warrant?

*Herle.* Not without award.

STANTON J. Whereas we can see nothing why she should not be warranted, this Court awards etc.; and whereas you have counterpleaded the warranty, the Court awards that they<sup>7</sup> hold the tenements in peace, and that Maud recover against you<sup>8</sup> if you have anything of the heritage etc., and if not, then against the tenants of the tenements etc. And you in the mercy etc.

<sup>1</sup> The text has 'is' (*est*).

<sup>2</sup> By *accioun plus haut* is apparently meant an act-in-law intended to realise a better right. This is the whole trend of *Friskeneys*' argument.

<sup>3</sup> By a special allusion to this fact counsel means to indicate that the principle *beati possidentes* has no application in this case.

<sup>4-4</sup> This is suggested to supplement the obviously defective text.

<sup>5</sup> *I.e.* the elder brother.

<sup>6</sup> Observe the references to common 'right' (*droit*) here and common 'law' (*ley*) in *Friskeneys*' statements above.

<sup>7</sup> *I.e.* the defendants.

<sup>8</sup> *I.e.* the vouchee.



15. HESLARTONE v. SALUAYN.<sup>1</sup>I.<sup>2</sup>

<sup>3</sup>Assisa vltime presentacionis ou le purchasor se eyda par statut.<sup>3</sup>

Iohan<sup>4</sup> de Haselardoune<sup>5</sup> et Margerie<sup>6</sup> sa femme et Robert filius<sup>7</sup> Cecil<sup>8</sup> porterent <sup>9</sup>vn assise<sup>9</sup> de dreyn presentement vers Gerard Salueyn<sup>10</sup> del Eglise de Langthorpe<sup>11</sup> et diseient qe vn Thomas de<sup>12</sup> Langethorpe<sup>13</sup> iadis gardeyn M.<sup>14</sup> <sup>15</sup>et E. mere cesti<sup>15</sup> Robert duraunt lour noun age taunt com lour corps et lour teres furent en sa garde presenta a mesme<sup>16</sup> cele<sup>17</sup> Eglise vn son Clerk W.<sup>18</sup> par noun qe<sup>19</sup> etc. qe fut dreyn presente et morust persone dreyn<sup>20</sup> par qi mort la Eglise est ore voide <sup>21</sup>en temps de pees etc. <sup>22</sup>E. patris<sup>22</sup> etc.<sup>21</sup> et <sup>12</sup>auaunt ly vn<sup>12</sup> pieres<sup>23</sup> pere les auauindits M.<sup>14</sup> et E.<sup>24</sup> mere etc.<sup>25</sup> presenta<sup>12</sup> a mesme la Eglise vn son<sup>26</sup> Clerk I.<sup>27</sup> par noun qe a son presentement etc. E.<sup>28</sup> patris<sup>29</sup> etc. et issi apent a nous a presenter et prioms lassise.

*Will.* Autrefoiz Robert fut noun sewy par qei agarde fut <sup>30</sup>qi fut<sup>30</sup> somons ad sequendum s(cilicet)<sup>31</sup> retornable a ore et cel somouns nest pas sewy<sup>32</sup> nel viconte nad rien retourne. et Dautrepart chescune agarde en<sup>33</sup> Court voet estre execute et la somouns fut agarde vers Robert<sup>34</sup> dount riens nest sewy<sup>35</sup> et demandoms iugement. si nous eyoms<sup>36</sup> iour<sup>37</sup> a ore a pleder.

*Ber.* Il nest mye tut vn en ceo cas ou<sup>38</sup> le tenant fet defaute. et<sup>39</sup> ou le *Cape* est agarde. qe la ne put il iammes pleder si le *Cape* ne soit sewy<sup>40</sup> mes ou parceners portent lour bref et lun est noun sewy<sup>41</sup> la somouns qest<sup>42</sup> agarde vers luy qest noun sewy ne sert<sup>43</sup> de autre riens si noun asauer sil voille sewer(e)<sup>44</sup> par quei tut ne soit il som(one) il sera bien r(ece)u. par qei <sup>45</sup>nous irroms a lassise etc.<sup>45</sup>

*Will.* Assise ne doit estre par la reson qe vn Robert Touch'<sup>46</sup> fut seisi de vn mees et de viii.<sup>47</sup> bouees de tere en L.<sup>48</sup> a qi lauoweson est

<sup>1</sup> Reported by *C, M, P, R, T, and X* (twice). <sup>2</sup> From *P*. Compared with *C, M, T*. <sup>3-3</sup> Dreyn presentement *C*. Assise de dreyn presentement *M*. No headnote in *T*. <sup>4</sup> Ion *C*. <sup>5</sup> Asselardtoun *C*. Alleard' *M*. Herlestone *T*. <sup>6</sup> *M. M*. <sup>7</sup> fiz *C*. le fitz *M*. fitz *T*. <sup>8</sup> Cecile *C*. Cecill' *M, T*. <sup>9-9</sup> lassise *M, T*. <sup>10</sup> Saluene *T*. <sup>11</sup> Langetost *C*. *L. M*. Louthorp *T*. <sup>12</sup> *Om. T*. <sup>13</sup> *L. C*. Langhephorp *M*, vthorp *T*. <sup>14</sup> Margerie *T*. <sup>15-15</sup> etc. e m(esme) cely *C*. et E. mere *M*. et Cecille miere *T*. <sup>16</sup> *Om. M*. <sup>17</sup> la *M, T*. <sup>18</sup> Wauter *T*. <sup>19</sup> qi *C, M, T*. <sup>20</sup> et enpersone de droit *M*. <sup>21-21</sup> *Om. T*. et auant ceo mesme cely Gerard presenta a mesme ceste etc. vn son clerk A. par noun etc. *M*. <sup>22-22</sup> et prest *C*. <sup>23</sup> *C. M*. <sup>24</sup> Cecille *T*. <sup>25</sup> Robert *C, M, T*. <sup>26</sup> Iohan *T*. <sup>27</sup> Robert *M*. Iohan *T*. <sup>28</sup> en *M*. <sup>29</sup> temps *M*. <sup>30-30</sup> vn *M, om. T*. <sup>31</sup> etc. *C*. sim(u)l *M, T*. <sup>32</sup> serui *C, M, T*. <sup>33</sup> de *M*. du *T*. <sup>34</sup> Iohan *M*. <sup>35</sup> execute ne sewy *C*. fait ne siwy *T*. <sup>36</sup> auoms *M*. <sup>37</sup> *Om. T*. <sup>38</sup> et en cas ou *C, T*. et ou *M*. <sup>39</sup> *Om. C, M, T*. <sup>40</sup> seruy *M, T*. <sup>41</sup> *Add: et M*. <sup>42</sup> *Om. M*. <sup>43</sup> serueroit *C*. <sup>44</sup> *Add: oue ses parceners ou noun mes Robert est ore a la barre et veut seure, M*. <sup>45-45</sup> responez a lassise *C, T*. responez ou viegne lassise *M*. <sup>46</sup> Souch'. *M*. Tochet *T*. <sup>47</sup> xx *M*. sil *T*. <sup>48</sup> Longetost *C*. Lutthorp *T*.

15. HESLARTONE *v.* SALUAYN.

## I.

Assize of last presentation, where the purchaser aided himself by the statute.

John of Heslartone and Margery his wife, and Robert the son of Cecily, brought an assize of last presentation against Gerard Salvayn,<sup>1</sup> for the church of Lowthorpe, and said that one Thomas of Heslartone, sometime guardian of Margery and Cecily, mother of this Robert, during their non-age, while their bodies and their lands were in his wardship, presented to the said church a clerk of his, Walter by name, who etc., who was the last presentee and died as the last parson, and by his death the church is now vacant, in time of peace etc. Ready<sup>2</sup> etc. And before him one Thomas<sup>3</sup> father of the said Margery and Cecily, mother etc., presented to the same church a clerk of his, John by name, who on his presentation etc. (in the time of King Edward) the father etc. And thus it belongs to us to present, and we pray the assize.

*Willoughby.* Before now Robert was non-suited, therefore it was awarded that he be summoned to sue (*ad sequendum*), namely, (by a writ) returnable now. And that summons has not been sued,<sup>4</sup> nor did the sheriff return anything. And on the other hand every summons awarded in Court ought to be executed, and the summons was awarded against Robert and of that nothing is sued. And we demand judgment whether we have now a day to plead.

BEREFORD C.J. It is not quite the same in this case <sup>5</sup>and in the case<sup>5</sup> where the tenant makes default and where the *cape* is awarded. For there he can never plead if the *cape* be not sued. But where parceners bring their writ and one is non-suited, there the summons which is awarded against him that is non-suited serves for nothing else save to know whether he wants to sue. Therefore albeit that he is not summoned, he will well be received. Therefore we shall proceed to the assize etc.

*Willoughby.* There ought not to be an assize, because one Robert Touchet was seised of one messuage and of eight bovates of land in

<sup>1</sup> See Introduction, p. xlvi.

<sup>2</sup> Supplied from *C.*

<sup>3</sup> Observe that the Y.B. has here Peter. The change had perhaps the purpose of averting confusion between

the two Thomases.

<sup>4</sup> It is doubtful whether this should be sued (by the party) or served (by the sheriff).

<sup>5-5</sup> Supplied from *C. S. Sim. M.*



apendante. le quel Robert a mesme cele eglise presenta etc. E.<sup>1</sup> Turkeby<sup>2</sup> en temps <sup>3</sup>H(enrici) R(egis)<sup>3</sup> Aui regis<sup>4</sup> nunc<sup>5</sup> le quel R. Toch<sup>6</sup> <sup>7</sup>des tenemenz<sup>7</sup> a quei etc.<sup>8</sup> appendante et<sup>9</sup> enf(ef)fa<sup>10</sup> lauantdit E.<sup>1</sup> de Turkeby. le qel E. de ces tenementz<sup>10</sup> morust<sup>11</sup> saunz heir de soi par quei les tenemenz <sup>12</sup>oue etc.<sup>12</sup> descend(irent) a vn Wauter <sup>13</sup>com a<sup>13</sup> frere le quel Wauter dona mesmes les tenemenz a quei etc. a vn Robert<sup>14</sup> Salueyn pere mesme cesti Gerard etc. en fraunc mariage oue sibille sa fille.<sup>15</sup> par quel doun il furent seisi et puis morust W.<sup>16</sup> par quei Robert<sup>17</sup> Salueyn et Sibille<sup>18</sup> sa femme assignerent mesmes les tenemenz a quei etc. a vne letice qe fut la femme le dit Wauter<sup>19</sup> en noun de dowere. de ques tenemenz la reuersion fut agardaunt<sup>20</sup> a Gerard fiz le dit Robert et Sibille<sup>21</sup> vers qi cesti bref est ore porte. la quele L. qe tient en dowere est ore mort issi qe Gerard est ore entre en les tenemenz a quei etc. come a sa reuersion et issint etc. apend a cesti G.<sup>22</sup> a presenter.

*Malm.* Cest vne assise de dreyn presentement et nous auoms assigne coment le gardeyn M.<sup>23</sup> et C.<sup>24</sup> presenta dreyn<sup>25</sup> com del droit M.<sup>23</sup> et C.<sup>26</sup> <sup>27</sup>et auant ceo vn T. pere M. et C.<sup>27</sup> mere Robert<sup>28</sup> presenta<sup>29</sup> etc. a quei vous ne r(espondez) nynt iugement et prioms lassise.

*Frisk.* Qant <sup>30</sup>a les presentements<sup>30</sup> qe les gardeyns etc. et auxi<sup>31</sup> T.<sup>32</sup> pere M. et C. mere Robert. sire<sup>33</sup> ceo ne nous doit greuer qe ceo fut taunqe<sup>34</sup> L.<sup>35</sup> qe fut la femme Wauter tynt<sup>36</sup> en noun de dowere les tenemenz a quei etc.

*Malm.* Cest excepcion <sup>37</sup>nest mye done si noun <sup>38</sup>en cas de<sup>37</sup> statut qe nest meyntenable<sup>39</sup> si noun en cas de statut<sup>38</sup> mes lestatut ne eyde fors les heirs les patrons qe vnt presente qe qant ces heirs serront<sup>40</sup> de pleyn age ou entrez en lour<sup>41</sup> reuersion. apres la mort le tenaunt en dowere. ou a terme de vie<sup>42</sup> <sup>43</sup>qe les presentements fet al eglise taunt com il sont<sup>44</sup> de deynz<sup>43</sup> age.<sup>45</sup> ne soit<sup>46</sup> mye si preiudiciel qil naueroit mesme laccion et mesme la excepcion come aueroit lour

<sup>1</sup> T. C. C. T. <sup>2</sup> Torkeburgh C. Torgeby qe a son presentement etc. M. <sup>3-3</sup> le Roy H. M, T. <sup>4</sup> Om. M. <sup>5</sup> Om. M, T. <sup>6</sup> Thoch' C. tenant M. Tochet T. <sup>7-7</sup> de ceo M. <sup>8</sup> Add: est C, T. <sup>9</sup> Om. C, M, T. <sup>10-10</sup> Om. M. <sup>11</sup> Add: seisi M, T. <sup>12-12</sup> ensemblement oue lauoweson M, T. <sup>13-13</sup> son M, T. <sup>14</sup> Add: de T. <sup>15</sup> Add: a Wauter C. <sup>16</sup> Wauter M, T. <sup>17</sup> Twice in M. <sup>18</sup> Isolde M. Cecille T. <sup>19</sup> Add: a tenir M, T. <sup>20</sup> regardaunt C, M, T. <sup>21</sup> Cecille T. <sup>22</sup> Gerard T. <sup>23</sup> Margerie T. <sup>24</sup> Cecille T. <sup>25</sup> la dreynne persone M. <sup>26</sup> E. C. <sup>27-27</sup> Om. M. <sup>28</sup> Roger C. <sup>29</sup> Om. M. <sup>30-30</sup> Singular C, M, T. <sup>31</sup> auxi qe C, T. qe M. <sup>32</sup> Thomas M. <sup>33</sup> fuerunt etc. C. firent M, T. <sup>34</sup> tant cum C. tantcom M. fait com T. <sup>35</sup> Letice M, T. <sup>36</sup> ont C. <sup>37-37</sup> est done par M. <sup>38-38</sup> in casu statuti T. <sup>39</sup> pas tenable C. mye meintenable M. <sup>40</sup> sount M. <sup>41</sup> la M. <sup>42</sup> Add: etc. M, T. <sup>43-43</sup> Om. M. <sup>44</sup> furent T. <sup>45</sup> Om. M. Add: et en garde ou tant com femme tent en dower ou a terme de vye C, Sim. T. <sup>46</sup> soient C, M. sount T.

Lowthorpe to which the advowson is appendant, and that Robert did to the said church present etc. Thomas of Thurkelby, in the time of King Henry grandfather of the present king. And the said Robert Touchet did enfeof of the tenements to which etc. appendant, the aforesaid Thomas of Thurkelby, who died seised of these tenements without an heir of his body. Therefore the tenements together with etc. descended to one Walter as to a brother, and that Walter gave these tenements to which etc. to one Robert Saluayn, father of this same Gerard, in frank-marriage with Sibyl his daughter. By that gift they were seised, and afterwards Walter died, therefore Robert Salvain and Sibyl his wife assigned these same tenements to which etc. to one Lettice, widow of the said Walter, in name of dower. The reversion of these tenements belonged to Gerard, the son of the said Robert and of Sibyl, against whom this writ is now brought. And that Lettice who held in dower is now dead, so that Gerard has now entered into the tenements to which etc. as into his reversion. And thus etc. it belongs to this Gerard to present.

*Malberthorpe.* This is an assize of last presentation, and we have shown how the guardian of Margery and Cecily was the last to present as by the right of Margery and Cecily, and before him one Thomas, father of Margery and of Cecily mother of Robert, did present etc. And to this you do not answer. Judgment, and we pray the assize.

*Friskeney.* As to the presentations by the guardians and also by Thomas, father of Margery and of Cecily, mother of Robert etc., sir, that ought not to hurt us, for that was while Lettice who was the wife of Walter held in the name of dower the tenements to which etc.

*Malberthorpe.* This exception is not given save in the case of the statute,<sup>1</sup> and it is not maintainable save in the case of the statute. The statute, however, only helps the heirs of the patrons who have presented, (so) that when the heirs will be of full age or enter into their reversion after the death of the tenant in dower or for term of life, the presentations made to the church while they were within age should not be prejudicial so as to deprive them of the same action and the

<sup>1</sup> Stat. Westm. 2, c. 5.



auncestre en la dreyn voidance<sup>1</sup> et ceo proue<sup>2</sup> par lestatut <sup>3</sup>qe dit.<sup>3</sup> *habeat*<sup>4</sup> *eandem accionem*<sup>3</sup> et<sup>3</sup> *ex(cepcio)nem* et gerard ad conu qil est fiz del purchasour va<sup>2</sup> qe<sup>5</sup> purchasour<sup>6</sup> de estrange purchas<sup>7</sup> cat<sup>2</sup> et ne moustret pas qe luy ou nul de ces auncestres<sup>8</sup> vnqes presenta etc. par qei il nest mye en cas de statut iugement etc.

*Fr.* Lestatut dit. quod non sunt<sup>9</sup> huiusmodi presentaciones p(ost) mortem tenencium in dotem etc. rectis heredibus aut illis ad quos present(aciones) spect(ant) etc. ita preiudiciales etc. ore <sup>10</sup>ne put estre<sup>10</sup> dedit qe L. ne tient ces tenemenz a tiel temps en dowere <sup>11</sup>a qei lauoweson etc. qe la reuersion ne<sup>3</sup> fut regardant<sup>12</sup> a nous iugement etc.

*Malm.* Les presentements qe rous auoms allegge etc. furent fet auant statut par qei vous ne poiez estre eyde par statut.

*Fr.* Doncqe grauntez vous bien qe letice tient en cel temps les tenemenz en dowere a qi lauoweson etc.<sup>11</sup> et<sup>13</sup> grauntet la<sup>14</sup> nostre excepcion <sup>15</sup>qe nous est<sup>15</sup> done par statut qe ceo qe vous ditez ne amoute a nyent plus qe la excepcion ne vous<sup>16</sup> doit valer pur ceo qe les presentementz furent auant statute.

*Malm.* Ieo ne <sup>17</sup>vous ne dedye ceo qe vous ditz<sup>17</sup> qe vous estes estrange purchasour qe vnqes ne presenta ne nul de vos auncestres <sup>18</sup>ne p(as)<sup>18</sup> en cas de statute et ouesqe ceo les presentements<sup>19</sup> furent<sup>19</sup> auaunt statute et en plai de assise qantqe homme put dire a uenir<sup>20</sup> a<sup>21</sup> lassise il<sup>22</sup> sera bien<sup>23</sup> receu.<sup>24</sup>

*Fr.* <sup>25</sup>Ne poet dedire<sup>25</sup> qe les presentements<sup>19</sup> furent<sup>19</sup> fet auant lestatut mes<sup>26</sup> lestatut eyde auxi bien les presentements fets al

<sup>1</sup> *Add*: auant lour mort *C.* auant lour mort ou auant ceo qe le lees feut fait a terme de vie *M.* *Sim.* *T.* (en *instead of* ou). <sup>2</sup> *Om.* *C.* *M.* *T.* <sup>3</sup> *Om.* *M.* <sup>4</sup> *habeat* *M.* *T.* <sup>5</sup> et *M.* qi *T.* <sup>6</sup> purch'. *C.* purchac'. *M.* purchasa. *T.* <sup>7</sup> purch. *C.* purchaceor *M.* purchac. *T.* <sup>8</sup> *Add*: ou le feffor soun auncestre ou sez auncestres *C.* *Sim.* *M.* *T.* <sup>9</sup> sint *C.* *T.* There are unimportant changes in the quotation in *C.* *M.* *T.* <sup>10-10</sup> nest *T.* <sup>11-11</sup> *Om.* *T.* <sup>12</sup> gard(ant) *C.* *om.* *M.* <sup>13</sup> ne *T.* <sup>14</sup> *Om.* *C.* *M.* *T.* <sup>15-15</sup> gest *M.* <sup>16</sup> nous *C.* *M.* *T.* <sup>17-17</sup> vous grante ne vous dedie ceo qe vous dites *C.* grante nient mes vous dye *M.* vous grante rien ne dedi mais vous di *T.* <sup>18-18</sup> et nestez pas *C.* prest etc. et issint nestes *M.* etc. et nest *T.* <sup>19</sup> *Sing.* *C.* <sup>20</sup> anenter *C.* de venir *M.* pur uenir *T.* <sup>21</sup> *Om.* *C.* <sup>22</sup> *Add*: dirra et *M.* <sup>23</sup> bon *T.* <sup>24</sup> r. *T.* <sup>25-25</sup> Il dit *T.* <sup>26</sup> et *C.* etc. mes il dit qe *M.* et nous uous dioms qe *T.*

same exception which their ancestor would have had at the last vacancy. And this is proved by the statute which says let him have the same action and exception (*habeat eandem accionem et excepcionem*).<sup>1</sup> And Gerard has admitted that he is the son of the purchaser, <sup>2</sup>who had purchased from a stranger purchaser,<sup>2</sup> and he does not show that he or any of his ancestors ever presented etc. Therefore he is not in the case of the statute. Judgment etc.

*Friskeney.* The statute says, let not such presentations be, after the death of the tenants in dower etc., so prejudicial to the right heirs or to those to whom the presentations belong etc. (*quod non sint huiusmodi presentaciones post mortem tenencium in dotem etc. rectis heredibus aut illis ad quos presentaciones spectant etc. ita preiudiciales etc.*). Now, it cannot be denied that at that time Lettice held these tenements to which the advowson etc. in dower, and that the reversion belonged to us. Judgment etc.

*Malberthorpe.* The presentations which we have alleged etc. were made before the statute. Therefore you cannot be helped by the statute.

*Friskeney.* Then you do well grant that at that time Lettice held the tenements to which the advowson etc., in dower, and you grant our exception which is given us by the statute, for that which you say does not amount to anything more than that the exception should be of no avail to us because the presentations were before the statute.

*Malberthorpe.* I do not deny you that which you say that you are a stranger purchaser who never did present and that none of your ancestors did, <sup>3</sup>and you are not<sup>3</sup> in the case of the statute. And with all this the presentations were before the statute, and in pleading the assize, whatever one can say to get to the assize he will well be received (to say).

*Friskeney.* It cannot be denied that the presentations were made before the statute. But the statute helps as to presentations made to

<sup>1</sup> The words of the statute are : . . . statutum est quod huiusmodi presentaciones non sint huiusmodi rectis heredibus aut illis ad quos post mortem aliquorum huiusmodi advocaciones reverti debent prejudiciales, quia quocienscunque aliquis jus non habens tempore huiusmodi custodiarum presentaverit, vel tempore tenencium in dotem per legem Anglie vel alio modo ad terminum vite vel annorum vel per feodum talliatum, in proxima vacacione postquam heres ad etatem pervenerit vel advocacio post mortem in forma

predicta tenencium ad heredem plene etatis existentem revertitur, habeat eandem accionem et excepcionem per breve de advocacione possessorium qualem haberet ultimus antecessor huiusmodi heredis plenam habens etatem in ultima vacacione tempore suo accidente ante mortem suam vel antequam dimissio facta fuerit ad terminum vel ad feodum talliatum ut predictum est. . .

<sup>2-2</sup> It is not quite clear whether this translation is correct.

<sup>3-3</sup> Supplied from *C*.



Eglise en temps de <sup>1</sup>dowere <sup>2</sup>ou a terme de vie<sup>1</sup> auaunt la confec-  
cion del estatut com apres<sup>2</sup> et de ceo demandoms iugement.

<sup>3</sup>*Et habuit diem ad audiendum iudicium<sup>4</sup> suum<sup>5</sup> in Octabis<sup>6</sup> sancti Hillarii et breue vicecomiti quod habeat Iur(atores) per corpora.<sup>3</sup>*

<sup>7</sup>*Ad quem diem<sup>7</sup>*

<sup>8</sup>*Scrop.* La ou vous dites qe vn Robert<sup>9</sup> fut seisi de vn mees etc. a qei etc. et presenta C.<sup>10</sup> de Turkeby la dioms nous qe vn I.<sup>11</sup> Gardeyn T. pere M.<sup>12</sup> Ael Robert par reson de noun age en sa garde esteaunt presenta mesme celuy C.<sup>13</sup> Turkeby prest etc.<sup>8</sup>

<sup>14</sup>*Et sic ad assisam.<sup>14</sup>*

## II.<sup>15</sup>

Dreyn presentement.

Ion Allard et Maud sa femme et Robert fitz Cecille porterent lassise de drein presentement vers Gerard Saluayn del esglise de Longthorpe et counterent qe vn T iadys gardein de Maude et de Emme miere Robert duraunt lour noun age presenta vn son clerk W. etc. par qi mort lesglise est ore voide et auaunt cel temps mesme cely T. presenta vn A. etc. et auaunt vn C. pierre Maude et ael Robert presenta vn Robert etc. en temps etc. issint apent a nous a presenter et prioms lassise.

*Wilb.* Autre foiz cesti Robert ne vynt pas par qey agarde fust la somouns *ad sequendum* qel somouns nest pas fet iugement etc.

*Ber.* Cel somouns ne sert mes qe de sauoir sil voile suire ou noun et par sa apparaunce a or sumes apris qil veut suire. mes la ley est autre en graunt Cape par qey responez.

*Wilb.* Assise ne doit estre par la reson qe vn Robert la Souch' feust seisi dun mies et xx boueez de tere a ceux lauoweson apent et presenta vn C. de Torkeby etc. en temps le Roi H. ael etc. Le qel Robert dona les tenemenz oue lauoweson a celuy C. et a ses heirs. De C. descendirent les tenemenz oue lauoweson a Walter son frere le qel dona etc. a Robert Saluein pierre cesti Gerard en fraunk mariage oue Sibille sa fille. peus Wauter morust par qey Robert et sa femme assignerent ces tenemenz et lauoweson a Letice qe fust la femme le dit

<sup>1-1</sup> gwerre com en temps de pees et *M.*      <sup>2-2</sup> et auant lestatut com apresenter  
*T.*      <sup>3-3</sup> *Om. T.*      <sup>4</sup> iugement *M.*      <sup>5</sup> *Om. M.*      <sup>6</sup> *XVna C.*      <sup>7-7</sup> *Om.*  
*M, T.*      <sup>8-8</sup> *Om. M.*      <sup>9</sup> *R. Toch. T.*      <sup>10</sup> *T. C, T.*      <sup>11</sup> *Ion C. R. T.*  
<sup>12</sup> *Margerie et T.*      <sup>13</sup> *T. de C, T.*      <sup>14-14</sup> et alii eontra *C, om. M.* et alii  
eontra etc. et sic etc. *T.*      <sup>15</sup> From X (second version).

the church in the time of (a tenant in) dower or for term of life, before the making of the statute as well as afterwards. And as to this we demand judgment.

And he had a day to hear his judgment in the octaves of St. Hilary, and a writ to the sheriff to have the jurors by their bodies.

On which day

*Scrope.* Whereas you say that one Robert was seised of one messuage etc. to which etc. and presented Thomas of Thurkelby, we say that one Stephen guardian of Walter great-grandfather of Margery and great-great-grandfather of Robert,<sup>1</sup> while by reason of nonage they were in his ward, presented that same Thomas of Thurkelby. Ready etc.

And thus to the assize.

## II.

### Last presentation.

John of Heslartone and Maud his wife and Robert the son of Cecily brought the assize of last presentation against Gerard Saluayn for the church of Lowthorpe, and counted that one Thomas sometime guardian of Maud and of Cecily mother of Robert, during their nonage presented a clerk of his, Walter etc., by whose death the church is now vacant, and before that time the same Thomas<sup>2</sup> presented one A. . . . etc. and before (then) one Thomas father of Maud and grandfather of Robert presented one John etc. in time etc. Thus it belongs to us to present, and we pray the assize.

*Willoughby.* Before now this Robert did not come, therefore there was awarded a summons *ad sequendum*, and that summons has not been made. Judgment etc.

BEREFORD C.J. That summons only serves to know whether he wants to sue or no, and by his appearance now we are informed that he wants to sue. But the law is different in the grand *cape*. Therefore answer.

*Willoughby.* There ought not to be an assize, because one Robert Toche was seised of one messuage and twenty bovates of land, to which the advowson is appendant, and he presented one Thomas of Thurkelby etc. in the time of King Henry the grandfather etc. And that Robert gave the tenements with the advowson to that Thomas and to his heirs. From Thomas the tenements with the advowson descended to Walter his brother, who gave etc. to Robert Saluayn father of this Gerard in frank-marriage with Sibyl his daughter. Afterwards Walter died, therefore Robert and his wife assigned these tenements and the advowson to

<sup>1</sup> These details are supplied from the record.

<sup>2</sup> This last presentation but one is not mentioned in the record.



Wauter a tenir en dower. Letice est morte issint apent a G. issue Robert et Sibille a presenter.

*Malm.* Nous auoms assigne presentements de gardein et de C. pierre M. et ael R. en temps plus tardif qe le presentement qe vous aleggez a quei ils ne respondent mie et prioms lassise.

*Frisk.* Ces presentements ne nous deiuent nure qar a cel temps Letice tint les tenemenz en dower.

*Malm.* Vous auez conu qe vostre pierre et vostre miere furent purchaceors et qils ne presenterent vnqes ne lour feffour et statut ne oeueres fors pur ces qe ount presente et pur lour heirs et vous auez les presentements conu<sup>1</sup> iugement etc.

*Frisk.* Statut veut qe *non sint huiusmodi presentaciones rectis heredibus aut illis ad quos huiusmodi presentaciones reueriti debent preiudiciales* et Letice tint en dower la reuersion a nous riguardaunt.

*Malm.* Les presentements ceux nous auoms alegge furent auaunt lestatut.

*Frisk.* Donques vous weiuez lautre excepcion.

*Malm.* Nanil. qar en assise qaunt qe nous sauoms dire nous sera alowe.

*Frisk.* ne pout dedire les presentements faits auant lestatut mes il dit qe lestatut se lie aussi bien a voider presentements faitz auant com apres et aussi bien a voider presentemenz faitz en temps de guere com en temps de pees.

### III.<sup>2</sup>

#### Drein presentement.

Iohan de Heselington porta son bref de drein presentement uers Gerard Saluy<sup>3</sup> dit qil mesme presenta a mesme la Eglise vn Robert par noun etc. e auant ly vn .T. qe a son presentement etc. en temps le Rei E. pere etc. par qi mort la eglise etc. e prioms lassise.

*Pass.* Le maner de Saluy a qi la voweson de la diste Eglise est appendant fut en la seisine vn Roger qe presenta a mesme la Eglise vn son Clerke Simond par noun etc. en temps le Rei H. etc. le quel

<sup>1</sup> Interlined.

<sup>2</sup> From R.

<sup>3</sup> *Suppl.* et.

Lettice who was the wife of the said Walter, to hold in dower. Lettice is dead, thus it belongs to Gerard, who is the issue of Robert and Sibyl, to present.

*Malberthorpe.* We have shown presentations by the guardian and by Thomas father of Maud and grandfather of Robert, at a time later than the presentation which you allege. To that they do not answer. And we pray the assize.

*Friskeney.* Those presentations ought not to hurt us because at that time Lettice held the tenements in dower.

*Malberthorpe.* You have confessed that your father and your mother were purchasers, and that they never did present, nor did their feoffor. And the statute only operates in favour of those who have presented and of their heirs. And you have admitted the presentations. Judgment etc.

*Friskeney.* The statute says, let not such presentations be prejudicial to the right heirs or to those to whom such presentations ought to revert (*non sint huiusmodi presentaciones rectis heredibus aut illis ad quos huiusmodi presentaciones reverti debent preiudiciales*), and Lettice held in dower, the reversion belonging to us.

*Malberthorpe.* The presentations which we have alleged were before the statute.

*Friskeney.* Then you waive the other exception.

*Malberthorpe.* No. For in an assize whatever we have to say will be allowed us.

*Friskeney* could not deny the presentations made before the statute but he said that the statute extends so as to avoid the (effects of presentations made before as well as after it, and as well to make void (the effects of) presentations made in time of war as in time of peace.

### III.

#### Last presentation.

John of Heslartone brought his writ of last presentation against Gerard Saluayn and said that he himself had presented to the same church one Robert by name etc., and before him one (Thomas), who on his presentation etc. in the time of King Edward father etc., by whose death the church etc. And we pray the assize.

*Passeley.* The manor of (Saluayn),<sup>1</sup> to which the advowson of the said church is appendant, was in the seisin of one Robert who presented to the said church a clerk of his, Thomas by name, etc., in the time of

<sup>1</sup> Lowthorpe, in the East Riding of Yorkshire.



Roger feffa de mesme ceu maner a qi la voweson etc. W. de nontone le quel .W. enfeffa *ut supra* Roger de Saluy aly e a ces heirs de son cors engendretz apres qe mort entra cest G. de Saluy com fiz et heir et asigna dower a vne felice sa mere de mesme le maner. a qi etc. la voweson etc. apres qi mort il est ore entre com en sa reuercion. e issint apent a nous de presenter etc.

*Denum.* La replicacion qil donne de voider nostre presentement si est dene par statut qe dit qe nul qe nad p(as) dr(eit) present(ement) a nul Eglise par necligence ou fraude de gardein ou tenant par la ley dengleterre qe tent les tenemenz apei la voweson est apendant etc. qe les heirs eient au tiel action et excepcion par bref possessorie qe son auncestre auoit ala drein voidaunce qe eschey en son temps le quel statut ou(er)e pur le heir la ou lur auncestre presenta etc. drein e il ount conu qe lur aunc(estres) fur(ent) purch(asours) qe ne presenterent vnqes. e il ount conu bien nos ij. presentements iugement e prioms bref al Euesqe.

*Pass.* Statut de Merl. veut qe nul ne seit destr(aint) a sute fere en countre la forme de son feffement. si eux ou lur auncestres ne la firent auant le temps etc. le quel statut ne parle pas de p(ur)ch(asour) e si auera le purch(asour) au(ssi) haut<sup>1</sup> la uerrement com le heir etc. e en mesme la manere en garde le purchasour de la seignorie auera le auerement sur la priorte auxi auant com le heir. auxi de ceste part etc. qe tot seoms nous purch(asours) de ceste auoweson il semble qe nous serroms reseu de voider vos presentements auxi auant com le heir.

*Scrop. iustice.* Statut veut qe ceux presentements purpris en temps de garde ou de temps par la ley dengleterre etc. ne seit pas si preiudiciel al heir ou a ceux a qi la reuersioun est apres la mort de aqun qil neit au tiel action et excepcion par *br(eve) poss(essorium)* com auereit son drein auncestre etc. e del oure qe la reuercion apent a I. nent aresteant qe I. est purch(asour) il semble qil auera benefice de statut etc.

*Herle.* Statut donne al heir au tel accion et excepcion par bref de possession com auereit son drein auncestre et auoit al drein voidaunce qe chey en son temps. e issint hors de cas de statut iugement etc. e en afermant nostre r(eson) nous dioms qe vos<sup>2</sup> ij. presentements qil ount conu furent auant statut et auaunt ceux .ij. presentements en afermant

<sup>1</sup> The MS. has aut(s)ihaut.

<sup>2</sup> *Corr.* nos.

King Henry etc. And the said Robert enfeofed of the said manor to which the advowson etc. (Thomas of Thurkelby) the which (Thomas) enfeofed (as above) Robert of Saluayn to him and to his heirs of his body begotten. After his death there entered this Gerard of Salvain as son and heir and assigned dower to one Lettice his mother, of the said manor to which etc. the advowson etc. And after her death he has now entered into his reversion. And thus it belongs to us to present, etc.

*Denom.* The reply which he gives in order to avoid our presentation, is denied by the statute,<sup>1</sup> which says that (if) any one, through the negligence or fraud of (his) guardian or of a tenant by the law of England who held the tenements to which the advowson is appendant etc., have no right of presentation to any church, that the heirs have, by possessory writ, a like action and exception as (their) ancestor (would have) had at the last vacancy which occurred in his time. That statute operates for the heir where the ancestor did present etc. last, and they have confessed that their ancestors were purchasers who never presented. And they have well confessed our two presentations. Judgment, and we pray (the) writ to the bishop.

*Passeley.* The statute of Marlborough says<sup>2</sup> that no one be distrained to do suit against the form of his feoffment, if they or their ancestors did not do it before the time etc. That statute does not speak of the purchaser, and yet the purchaser will have as high an averment as the heir etc. And in the same way in wardship the purchaser of the seignory will have the averment as to the priority as much as the heir. The same applies here etc. And albeit that we are purchasers of this advowson, it seems that we shall be received to avoid your presentations, as much as the heir (would).

SCROPE J. The statute says that such presentations in the time of wardship or of (tenancy) by the courtesy of England etc., be not so prejudicial to the heir or to those to whom the reversion belongs after the death of any (parson) that he have not such an action and exception by possessory writ, as would have had their last ancestor etc., and since the reversion belongs to John, notwithstanding that John is purchaser, it seems that he shall have the benefit of the statute etc.

*Herle.* The statute gives to the heir such an action and exception by a possessory writ, as his last ancestor would have had, and did have, at the last vacancy which happened in his time. And thus (they are) outside the case of the statute. Judgment etc. And in affirming our argument we say that (our) two presentations which they have admitted were before the statute. And before those two presentations

<sup>1</sup> St. Westm. 2, c. 5.

<sup>2</sup> St. Marl. c. 9.



qe nous sumes droit auowe. vous dioms qe .I. nostre ael presenta la tierz feth(e) auant sca tut etc.

*Wilb.* Vous alegez .ij. choses. vne qe nous ne sumes pas en cas de statut pur ceo qe nostre auncestre ne presenta vnqes vn autre. qe les .ij. presentements qe nous auoms conuz furent auaunt statut le queux .ij. choses purront prendre diuerse issues par qei tenet vous al vn.

*Herle.* Le vn et lautre tendent a vn effect. par qei etc.

*Pass.* Vous deites qe auant les .ij. presentementz conuz vostre ael presenta la tierz foith(e). nous vous dioms qe le feffour nostre auncestre presenta drein auaunt les ii. prest etc.

Et a ceo ne voleit *Herle* r(espondre) mes se teint a sa primere excepcion etc.

*Herle.* La replicacion qil mettent auant de voider nos .ij. presentements si est dene par statut pur duresce qe fut al commune lei qe fut qe si nul presentement fut purpris sur asqun qe en auoit il nauoit autre recouerer forge par son bref de droit et pur les heirs de ceux ouere lestatut. dount del oure qil ount conu qil sunt purchasours. et purchasour ne peut par my la lei vsere le bref de droit qe il couendreit estre de lour presentement demesne iugement si benefice del statut deiuent il auera. Estre ceo. nous auoms dit qe les ij. presentements qil ount conu furunt deuant lestatut dont fut issint qe apres le premer presentement de ij. qe nous vssoms porte nostre bref de drein presentement et auant statut uers vostre auncestre ou vers son feffour pout il auer voider nostre presentement a ceu temps. certes nanyl etc. tot usont il presente. mesme qe la ley ne fut pas tele a cet temps nent pus ore qe statut ne eide pas forge de presentement pus la fesaunce etc. qar de presentement deuaunt sunt il ale commune ley. e de pus qil ne d(e)d(ie)nt pus qe les ij. presentements ne furent deuant lestatut iugement etc.

#### IV.<sup>1</sup>

Drein presentement.

Iohan de Hellartone porta drein presentement vers Gerard Saluayn et dist qil mesme presenta A. par qi mort etc. et auant li vn B qi fu receu etc.

*Pass.* Le maner de Saluayn a qei etc. est apendaunt fut enla seisine

<sup>1</sup> From X (first version).

(in affirming that we are the right patron) we tell you that Thomas our grandfather presented the third time before all this etc.

*Willoughby.* You allege two things: first, that we are not in the case of the statute because our ancestor never presented; secondly, that the two presentations which we have confessed were before the statute. These two things might require separate issues, therefore stick to one.

*Herle.* One and the other tend to the same effect. Therefore etc.

*Passeley.* You say that before the two presentations (which are admitted) your grandfather presented the third time. We tell you that our ancestor's feoffor presented last before the two. Ready etc.

And to this *Herle* would not answer but stuck to his first exception etc.

*Herle.* The reply which they put forward in order to avoid our two presentations is (given) by the statute because of a hardship which existed at the common law. It was this, that if any presentation was snatched from anybody who had it, he had no other recovery save by his writ of right, and it is for the heirs of those people that the statute operates. Therefore since they have confessed that they are purchasers, and a purchaser cannot, according to law, use the writ of right, which would have to be (used) for their own presentation, judgment whether they ought to have the benefit of the statute. Moreover, we have said that the two presentations which they have confessed were before the statute. Therefore, had it been so that after the first one of the two presentations we had brought our writ of last presentation (before the statute) against your ancestor or against his feoffor; could he have avoided our presentation at that time? Certainly not etc., even if they themselves had presented, because the law was not such at that time. No more (can they) now, because the statute only helps as to presentations after its making etc., because as to presentations before (the making of the statute) he has the common law. And since they do not deny that the two presentations were before the statute, judgment etc.

#### IV.

##### Last presentation.

John of Heslartone brought (an assize of) last presentation against Gerard Saluayn and said that he himself had presented (Thomas) by whose death etc., and before him one (Thomas) who was received etc.

*Passeley.* The manor of Saluayn<sup>1</sup> to which etc. is appendant was

<sup>1</sup> Lowthorpe, in the East Riding of Yorkshire.



vn Roger qi presenta et. le quel dona la maner a W. de N. le quel dona a Roger de Saluein et as heirs de son cors et Roger desc(endist) par la forme a cesti Ger(ard) qi assigna le maner a letice qe fu la feme Roger son pere en dower apres qi mort nous sumes entrez com en nostre reuersion issinst apend etc. et les presentements qe vous aleggez se firent en tens qe Letice tint le maner en dower.

*Herle.* Vous auez conu nos presentements et les voidez par statut. ou statut ne oure pas pour vous. qar statut dit qe heir eit mesme laccion et excepcion com son auncestre aueit al drein voidance et vous dites qe vostre auncestre purchacea et vnqes ne presenta par qei etc. Estre ceo le statut oure pour ces qi auant statut poient vser bref de droit. mes proch . . . ne peut vser bref de droit de presentement de estrang(er). Estre ceo nos ij presentements furent auant statut a quel tens si vous ussez vse tel bref nous vous<sup>1</sup> vssoms barre par qei etc.

### Notes from the Record.

#### I.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 20. Yorkshire. Written by Burnedissh.

Assisa venit recognitura quis aduocatus tempore pacis presentauit vltimam personam que mortua est ad ecclesiam de Louthorpe que vacat etc. Et cuius aduocacionem Iohannes de Heslartone et Margeria vxor eius et Robertus filius Cecilie filie Thome de Louthorpe in Curia hic clamant uersus Gerardum Saluayn. Et vnde ijdem Iohannes Margeria et Robertus per Ricardum de Pikeringe attornatum predictae Margerie et custodem predicti Roberti dicunt quod quidam Thomas de Heslartone custos predictae Margerie et Cecilie matris predicti Roberti dum eedem Margeria et Cecilia infra etatem fuerunt et in custodia ipsius Thome vltimo presentauit ad predictam ecclesiam quemdam Walterum de Louthorpe clericum suum qui ad presentationem suam fuit admissus et institutus tempore pacis tempore domini Edwardi Regis patris domini Regis nunc qui vltimo obiit persona in eadem per cuius mortem predicta ecclesia modo vacat. Et ante ipsum quidam Thomas de Louthorpe pater predictarum Margerie et Cecilie matris predicti Roberti cuius heres etc. presentauit ad eandem ecclesiam quemdam Iohannem de Louthorpe clericum suum qui ad presentationem suam fuit admissus et institutus tempore pacis tempore predicti Edwardi Regis patris etc. et ea ratione pertinet ad ipsos Iohannem Margeriam et Robertum ad predictam ecclesiam presentare vnde petunt quod assisa procedat etc.

Et Gerardus dicit quod ad ipsum et non ad predictos Iohannem Margeriam et Robertum pertinet ad predictam ecclesiam presentare quia dicit quod quidam Robertus Toche quondam fuit seisisus de vno mesuagio et octo bouatis terre cum pertinenciis in Louthorpe ad que aduocacio predictae ecclesie pertinet

<sup>1</sup> Interlined.

in the seisin of one Robert who presented etc., and who gave the manor to (Thomas), who gave it to Robert of Saluayn and to the heirs of his body, and (from) Robert (it) descended by the form (of the grant) to this Gerard who assigned the manor to Lettice, who was the wife of Robert his father, in dower. After her death we entered as into our reversion. Thus it belongs etc. And the presentations which you allege were made in the time when Lettice held the manor in dower.

*Herle.* You have admitted our presentations and (are trying to) avoid them by the statute, while the statute does not operate for you. For the statute says that the heir shall have the same action and exception as his ancestor had at the last vacancy, and you say that your ancestor purchased, and never presented, wherefore etc. Moreover, the statute operates for those who before the statute could use the writ of right, but a purchaser cannot use the writ of right on the presentation of a stranger. Moreover, our two presentations were before the statute, and at that time if you had used a writ like this we would have barred you. Therefore etc.

#### Notes from the Record.

##### I.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 20. Yorkshire. Written by Burnedishe.

An assize comes to find what patron in time of peace presented the last parson, who is dead, to the church of Lowthorp, which is vacant etc., and of which John of Heslartone and Margery his wife and Robert the son of Cecily daughter of Thomas of Lowthorpe here in the Court claim the advowson against Gerard Saluayn. And as to which the said John, Margery, and Robert say by Richard of Pikeringe, attorney of the said Margery and guardian of the said Robert, that one Thomas of Heslartone, guardian of the said Margery and Cecily (the mother of the said Robert), last presented to the said church (while the said Margery and Cecily were below age and in the wardship of the said Thomas), one Walter of Lowthorpe, his clerk, who on his presentation was admitted and instituted in time of peace in the time of Lord Edward the King, father of our Lord the present King, who died last as parson in the same church and by whose death the said church is now vacant. And before him one Thomas of Lowthorpe, father of the said Margery and Cecily mother of the said Robert whose heir etc., presented to the same church one John of Lowthorpe, his clerk, who on his presentation was admitted and instituted in time of peace in the time of the said Edward the King, father etc. And by that reason it belongs to the said John, Margery and Robert to present to the said church, whereof they pray that the assize may proceed etc.

And Gerard says that it belongs to him, and not to the said John, Margery, and Robert, to present to the said church. For he says that one Robert Toche was at one time seised of one messuage and eight bovates of land with the appurtenances in Lowthorpe, to which belongs the advowson of the said



**Notes from the Record**—*continued.*

qui quidam (*sic*) Robertus ad eandem ecclesiam presentauit quemdam Thomam de Thurkelby clericum suum qui ad presentacionem suam fuit admissus et institutus tempore pacis tempore domini Henrici Regis aui domini Regis nunc qui quidam Robertus Toche de eisdem tenementis ad que predicta aduocacio pertinet feoffauit quendam Thomam de Thurkelby qui inde obiit seisitus sine herede de se per quod tenementa illa ad que etc. descenderunt cuidam Waltero vt fratri et heredi etc. qui quidam Walterus tenementa illa ad que etc. dedit cuidam Roberto saluayn patri istius Gerardi in liberum maritagium cum quadam sibilla filia ipsius Walteri qui quidem Robertus saluayn et sibilla post mortem predicti Walteri predicta tenementa ad que etc. assignauerunt cuidam Leticie que fuit vxor ipsius Walteri tenenda nomine dotis etc. que quidem tenementa post mortem ipsius Leticie reuertebantur ad ipsum Gerardum filium et heredem predictorum Roberti saluayn et sibille Et modo est inde seisitus et ea racione pertinet ad ipsum Gerardum ad predictam ecclesiam presentare etc. Et quo ad predictas presentaciones quas predicti Iohannes et alii allegant predictos Thomam de Heslartone et Thomam de Louthorpe ad eandem ecclesiam fecisse dicit quod presentaciones ille non debent ipsi Gerardo preiudicare quia dicit quod presentaciones ille facte fuerunt dum predicta Leticia tenuit predicta tenementa ad que etc. nomine dotis etc. Et hoc paratus est verificare per assisam vnde petit iudicium etc.

Et Iohannes et alii dicunt quod ad ipsos et non ad predictum Gerardum pertinet ad predictam ecclesiam presentare quia dicunt quod cum predictus Gerardus expresse cognosc(at) quod predicti Robertus et sibilla antecessores sui fuerunt extranei perquisitores de extraneo perquisitore de aduocacione predicta Idem Gerardus docere non potest quod ipse vel aliquis antecessorum suorum vel eorum feoffator vncquam presentauerunt ad predictam ecclesiam etc. Dicunt etiam quo ad hoc quod predictus Gerardus admitteretur ad predictas presentaciones euacuandas racione predicta etc. hoc esset virtute statuti etc. Et dicunt quod Idem Gerardus beneficio statuti gaudere non debet in hoc casu eo quod idem statutum locum non habet nisi tantum de presentacionibus factis ad ecclesias etc. post idem statutum editum etc. Et dicunt quod predicte due presentaciones tam de predicto Waltero vltima persona etc. quam de predicto Iohanne de Louthorpe etc. facte fuerunt ante tempus statuti etc. Et hoc parati sunt verificare etc. vnde petunt iudicium etc.

Et Gerardus non dedit quin predicte presentaciones facte fuerunt ante statutum editum etc., set dicit quod vt sibi videtur Idem statutum locum habet tam de presentacionibus factis tempore tenencium in dotem etc. ante predictum statutum editum quam post etc. vnde petit iudicium etc.

Dies datus est eis de audiendo iudicio suo hic In Octabis sancti Hillarii etc. Et preceptum est coronatoribus Comitatus predicti quod habeant corpora recogn(itorum) hic ad prefatum terminum etc. eo quod Idem Gerardus est vicecomes comitatus predicti etc.

Notes from the Record—*continued*.

church. And that Robert presented to the said church one Thomas of Thurkelby, his clerk, who on his presentation was admitted and instituted in time of peace in the time of Lord Henry the King, grandfather of our Lord the present King. And that Robert Toche enfeoffed of the same tenements to which the said advowson belongs, one Thomas of Thurkelby who died seised thereof, without an heir of his body, wherefore those tenements to which etc. descended to one Walter as brother and heir etc. And that Walter gave those tenements to which etc. to one Robert Saluayn father of this Gerard, in frank-marriage with one Sibyl daughter of the said Walter. And after the said Walter's death the said Robert Saluayn and Sibyl assigned the said tenements to which etc. to one Lettice who was wife of the said Walter, to hold in the name of dower etc. And after the death of the said Lettice those tenements reverted to him the said Gerard, son and heir of the said Robert Saluayn and Sibyl. And he is now seised thereof and by that reason it belongs to him, Gerard, to present to the said church etc. And as to the said presentations to the same church which the said John and the others allege to have been made by the said Thomas of Heslartone and Thomas of Lowthorpe, he (Gerard) says that those presentations ought not to prejudice him, because he says that those presentations were made while the said Lettice held the said tenements to which etc. in the name of dower etc. And this he is ready to aver by the assize, wherefore he prays judgment etc.

And John and the others say that it belongs to them, and not to the said Gerard, to present to the said church. For they say that while the said Gerard expressly admits that the said Robert and Sibyl, his ancestors, were stranger purchasers from a stranger purchaser of the said advowson, the said Gerard cannot shew (*docere*) that he or any of his ancestors or their feoffor ever presented to the said church etc. They also say as to this, that the said Gerard should be admitted to avoiding the said presentations by the said reason etc., that this would be by virtue of the statute etc. and that Gerard ought not to enjoy in this case the benefit of the statute, because (the effect of) the said statute only takes place as to presentations to churches etc. made after that statute had been issued (*editum*) etc. And they say that the said two presentations, both of (*de*) the said Walter, the last parson etc., and of the said John of Lowthorpe etc., were made before the time of the statute etc. And this they are ready to aver etc. concerning which they pray judgment etc.

And Gerard does not deny that the said presentations were made before the statute had been issued etc., but he says that as it seems to him the said statute takes effect as well as to presentations made in the time of tenants in dower etc. before the said statute had been issued as after etc. And as to this he prays judgment etc.

A day was given them to hear their judgment here on the octaves of St. Hilary etc. And the Coroners of the said county were commanded that they have here the bodies of the recognitors on the said day (*terminus*) etc., because the said Gerard is Sheriff of the said county etc.



**Notes from the Record—continued.**

Postea ad diem illum venerunt partes predictæ etc. Et predicti Iohannes Margeria et Robertus dicunt ulterius quo ad presentationem quam predictus Gerardus sumit pro titulo suo etc. quam asserit predictum Robertum Toche feoffiatorem etc. fecisse ad predictam ecclesiam de predicto Thoma de Thurkelby dicunt (*sic*) quod predictus Robertus non presentavit predictum Thomam ad predictam ecclesiam Immo quidam stephanus le Menyl tempore quo quidam Walterus de Louthorpe proauus predictarum Margerie et Cecilie matris predicti Roberti filii Cecilie cuius heredes ipse sunt fuit infra etatem et in custodia ipsius stephani vt de Iure ipsius Walteri presentavit predictum Thomam de Thurkelby ad predictam ecclesiam. Et hoc parati sunt verificare per assisam etc.

Et Gerardus dicit quod predictus Robertus Thothe presentavit predictum Thomam ad predictam ecclesiam et non predictus stephanus sicut predicti Iohannes et alii dicunt. Et de hoc ponit se super assisam.

Et Iohannes et alij similiter.

Ideo capiatur assisa set ponitur in respectum vsque a die Pasche in xv dies per defectum recognitorum quia nullus venit. Ideo coronatores Comitatus predicti habeant corpora etc. eo quod Idem Gerardus est vicecomes Comitatus predicti etc.

Postea ad diem illum venerunt partes predictæ per attornatos suos. Et recognitores Assise non venerunt eo quod coronatores non miserunt breue. Ideo Assisa ponitur in respectum vsque in Octabis sancte Trinitatis per defectum recognitorum quia nullus venit. Iidem coronatores habeant corpora etc.

Postea continuato processu hinc inde vsque a die Pasche in tres septimanas anno Regni domini Regis nunc septimo venerunt tam predicti Iohannes Margeria et Robertus per Ricardum de Pikeryng attornatum predictorum Iohannis et Margerie et custodem predicti Roberti quam predictus Gerardus per Iohannem de Skeltone attornatum suum hic in Curiam. Et iidem Iohannes de Heslartone Margeria et Robertus dicunt quod assisa predicta inde inter ipsos et predictum Gerardum procedere non debet nec Idem Gerardus aliquid iuris clamare potest in aduocacione predictæ ecclesie Quia dicunt quod Idem Gerardus postquam placitauerant et posuerant se in assisam predictam per scriptum suum concessit et omnino de se et heredibus suis quietumclamauit ipsis Iohanni Margerie et Roberto et eorum heredibus totum Ius et clam(ium) que vncquam habuit seu quoquomodo decetero habere poterit in aduocacione ecclesie predictæ seu in presentatione ad eandem Ita quod nec idem Gerardus nec heredes sui in predicta aduocacione seu in presentatione ad eandem aliquid Iuris vel clam(ii) decetero exigere poterit vel vindicare imperpetuum. Et profert scriptum illud sub nomine ipsius Gerardi quod hoc testatur vnde petit iudicium etc.

Et predictus Gerardus requisitus si predictum scriptum sit factum suum dicit reuera quod sic.

Ideo consideratum est quod predicti Iohannes de Heslartone Margeria

**Notes from the Record**—*continued*.

Afterwards on the said day there came the said parties etc. And the said John, Margery and Robert say further as to the presentation which the said Gerard takes for his title etc. and which he asserts to have been made to the said church by the said Robert Toche, the feoffor etc., for the said Thomas of Thurkelby,—that the said Robert did not present the said Thomas to the said church, but that one Stephen le Menyl, at a time when one Walter of Lowthorpe, great-grandfather of the said Margery and Cecily (mother of the said Robert the son of Cecily), whose heirs they are, was below age and in the wardship of the said Stephen, presented as of the right of the said Walter the said Thomas of Thurkelby to the said church. And this they are ready to aver by the assize etc.

And Gerard says that (it was) the said Robert Toche that presented the said Thomas to the said church, and not the said Stephen, as the said John and the others say. And as to this he puts himself upon the assize.

And John and the others do the like.

Therefore let the assize be taken, but it is put in respite until the quindene of Easter for default of the recognitors, because none has come. Therefore let the Coroners of the said county have the bodies etc., because the said Gerard is Sheriff of the said county etc.

Afterwards on the said day there came the said parties by their attorneys, and the recognitors of the assize have not come because the Coroners have not sent the writ. Therefore the assize is put in respite until the octaves of Holy Trinity for default of the recognitors because none came. Let the said Coroners have the bodies etc.

Afterwards, the process as to this having been continued thence until three weeks after Easter in the seventh year of the reign of our Lord the present King, there came here into the Court as well the said John, Margery, and Robert, by Richard of Pikeryng, attorney of the said John and Margery and guardian of the said Robert, as the said Gerard, by John of Skeltone, his attorney. And the said John of Heslartone, Margery and Robert say that as to this the said assize ought not to proceed between them and the said Gerard, neither can the said Gerard claim any right in the advowson of the said church. For they say that, after they had pleaded and had put themselves upon the said assize, that same Gerard did by his writing grant and entirely quit-claimed from (*de*) himself and his heirs, to them the said John, Margery, and Robert and their heirs, the whole right and claim that he has ever had or in any way henceforth could have in the advowson of the said church or in the presentation to the same, so that neither the said Gerard nor his heirs could henceforth for ever demand (*exigere*) or vindicate any right or claim in the said advowson or in the presentation to the same. And he (the attorney of John and Margery and guardian of Robert) proffers that writing (under the name of the said Gerard) which witnesses this, and as to this he demands judgment etc.

And the said Gerard, upon being asked whether the said writing is his deed, says indeed that it is.

Therefore it was considered that the said John of Heslartone, Margery,



**Notes from the Record**—*continued.*

et Robertus recuperent presentacionem suam versus predictum Gerardum ad predictam ecclesiam. Et Gerardus in misericordia. Et ijdem Iohannes Margeria et Robertus habeant breue Archiepiscopo Ebor(acensi) quod non obstante reclam(acione) predicti Gerardi ad presentacionem predictorum Iohannis Margerie et Roberti ad predictam ecclesiam idoneam personam admittat etc.

Et super hoc ijdem Iohannes Margeria et Robertus gratis remittunt ipsi Gerardo dampna sua etc.

**II.**

De Banco Roll 195a, Mich. 6 Edw. II., membr. 406 verso. Yorkshire.  
Written by Pykeringe.

Gerardus Saluayn vicecomes Comitatus predicti in misericordia pro pluribus defaltis etc.

Idem Gerardus vicecomes attachiatus fuit per Coronatores Comitatus predicti ad respondendum tam domino Regi quam Iohanni de Heslartone et Margerie vxori eius et Roberto filio Cecilie filie Thome de Louthorpe de placito quare cum nuper predicto Gerardo vicecomiti etc. preceperit Rex quod summoneret etc. xii liberos et legales homines de visneto de Louthorpe quod essent hic in Octabis sancte Trinitatis proximo preteritis parati sacramento (*sic*) recogn(oscere) quis aduocatus tempore pacis presentauit vltimam personam que mortua est ad ecclesiam de Louthorpe que vacat vt dicitur Et cuius aduocacionem predicti Iohannes et Margeria et Robertus dicunt ad se pertinere Et interim ecclesiam illam viderent et nomina eorum imb(?)ri facerent, Et quod summoneret etc. predictum Gerardum qui aduocacionem illam eis deforc(iat) quod esset hic auditurus illam recognicionem, Idem vicecomes pefat(is) Iustic(iariis) Regis hic ad diem illum mandauit quod precepit balliuis libertatis prepositure Beuerlaci quod preceptum Regis prius sibi directum exequerentur, qui nichil inde fecerunt, Et quia testatum fuit hic quod predictus Gerardus qui est vicecomes Comitatus predicti et pars in assisa predicta falso et maliciose fecit returnum predictum balliuis predicte libertatis quod ecclesia illa non est infra libertatem predictam in Regis contemptum manifestum et iuris predictorum Iohannis et Margerie et Roberti prorogacionem etc. Et vnde Iidem Iohannes et Margeria et Robertus tam pro domino Rege quam pro se ipsis per attornatum suum queruntur quod Idem Gerardus vicecomes etc. fecit predictum returnum falsum in contemptum domini Regis Mille Librarum et predictorum Iohannis et Margerie et Roberti dampnum ducentarum Librarum Et inde producunt sectam etc.

Et Gerardus vicecomes etc. per Thomam de Thurkelby attornatum suum venit Et defendit vim et iniuriam Et quicquid est in contemptum domini Regis. Et dicit quod ipse fecit bonum returnum eo quod predicta ecclesia est infra libertatem predicte prepositure etc. et non extra libertatem predictam

**Notes from the Record**—*continued*.

and Robert, recover against the said Gerard their presentation to the said church. And Gerard in mercy. And let the said John, Margery, and Robert have a writ to the Archbishop of York that notwithstanding the claim of the said Gerard he admit to the said church a fit parson etc. on the presentation of the said John, Margery and Robert.

And thereupon the said John, Margery and Robert do of their own will remit to the said Gerard their damages etc.

**II.**

**De Banco Roll 195a, Mich. 6 Edw. II., membr. 406 verso. Yorkshire.**  
**Written by Pykeringe.**

Gerard Saluayn, Sheriff of the said county, in mercy for several defaults etc.

The same Gerard, Sheriff, was attached by the Coroners of the said county to answer as well our Lord the King, as John of Heslartone and Margery his wife and Robert the son of Cecily the daughter of Thomas of Lowthorpe in a plea why, when lately (*nuper*) the King had commanded the said Gerard, Sheriff etc., to summon etc. twelve free and lawful men from the venue of Lowthorpe that they be here on the octaves of Holy Trinity last, ready to find upon their oath what patron in time of peace presented the last parson, who is dead, to the church of Lowthorp, which is vacant, as is said, and of the advowson of which the said John and Margery and Robert say that it belongs to them, and that in the meantime they (the recognitors) see the said church and let their names be . . . ,—and (the King had lately also commanded the said Sheriff) to summon etc. the said Gerard who deforces from them the said advowson, to be here to hear that recognition,—the said Sheriff sent word on that day to the King's said Justices here, that he had commanded the bailiffs of the liberty of the Provostship of Beverley, that they execute the King's command formerly directed to him, and (that) they had done nothing concerning that matter,—and (he was attached) because it had been testified here that the said Gerard, who is a Sheriff of the said county and a party in the said assize, did falsely and maliciously make the said return to the bailiffs of the said liberty, because that church is not within the said liberty, in the manifest contempt of the King and to the delay of the right of the said John and Margery and Robert etc. And concerning which matter the said John and Margery and Robert complain by their attorney as well for our Lord the King as for themselves, that the said Gerard, Sheriff etc. made the said false return to the contempt of our Lord the King of one thousand pounds and to the damage of the said John and Margery and Robert of two hundred pounds. And as to this they produce suit etc.

And Gerard, Sheriff etc., comes by Thomas of Thurkelby his attorney, and denies force and wrong, and whatever is to the contempt of our Lord the King. And he says that he made a good return because the said church is within the liberty of the said Provostship and not outside the said liberty,



**Notes from the Record**—*continued*.

sicut predicti Iohannes et Margeria et Robertus per breue suum supponunt. Et de hoc ponunt (*sic*) se super patriam.

Et Iohannes et Margeria et Robertus tam pro domino Rege quam pro se ipsis similiter.

Ideo preceptum est Coronatoribus Comitatus predicti eo quod idem Gerardus est vicecomes eiusdem Comitatus quod venire faciant hic In Octabis sancti Hillarii xii etc. per quos etc. Et qui nec etc. quia tam etc.

16. LA ZUSCHE *v.* BEAUMONT.<sup>1</sup>**I.**<sup>2</sup>

Derein present(ement) porte par Al(eyn) qe prist son tite dun presentement sa aiele qe presenta le derein etc. descendist deqe a ly.

Aleyn de la Souche porta vne assise de derein presentement devers Henri de Beaumund et Iohane sa femme. et dit qune Elyne aiele Aleyn presenta vn soun clerc Ph. de Nortone qe a soun presentement fut etc.

<sup>1</sup> Reported by *C*, *G*, and *T*.

<sup>2</sup> From *G*.

**Notes from the Record—continued.**

as the said John and Margery and Robert suppose by their writ. And as to this he puts himself upon the country.

And John and Margery and Robert do the like, as well on behalf of our Lord the King as on their own behalf.

Therefore the Coroners of the said county, because Gerard is Sheriff of that county, were commanded that they cause to come here on the octaves of St. Hilary twelve etc. by whom etc. and who are neither etc. because both etc.

16. LA ZUSCHE *v.* BEAUMONT.

## I.

(Assize of) last presentation brought by Alan la Zusche who took his title from a presentation by his grandmother who had presented the last (parson). It descended (from her) to him.

Alan la Zusche<sup>1</sup> brought an assize of last presentation against Henry of Beaumont<sup>2</sup> and Alice his wife,<sup>3</sup> and said that one Helen Alan's grandmother had presented her clerk, one Philip of Northampton, who on

<sup>1</sup> Alan la Zouche accompanied Eleanor Countess of Bar to France by the King's command in 1294, and made a journey to the Court of Rome in 1299 (*Cal. Pat.* 1292-1301, pp. 67, 397). He served in the Scots wars of Edward I (*Cal. Close* 1307-13, p. 119), and in 1308 made a pilgrimage to Santiago. In 1311 he was on the abortive commission appointed, at the request of John de Somery, to inquire into an accusation of interfering with justice brought against the latter by William de Bereford (*Cal. Pat.* 1307-13, p. 369). In 1312 he was a commissioner of oyer and terminer (*ibid.* pp. 546-7) and Constable of Rockingham Castle (*Cal. Close* 1313-18, pp. 394, 406), but in the following year he was removed from this office and from the stewardship of the forests between Oxford and Stamford Bridge in favour of Aymer de Valence (*Cal. Pat.* 1313-17, p. 85). He died before April 20, 1314 (*Cal. inq. p.m.* v, 458).

<sup>2</sup> Henry de Beaumont served in the Scottish wars of Edward I and Edward II (*Cal. Pat.* 1307-13, p. 327; 1313-17, p. 371), and was in the King's service beyond sea in 1312-13 (*Cal. Pat.* 1307-1313, pp. 484, 580) and again in 1316 (*ibid.* 1313-17, pp. 451, 466); he also

accompanied Queen Isabel to France in 1314 (*ibid.* p. 86). He was described as the King's kinsman, and obtained large grants of land from Edward II (*Cal. Pat.* 1307-13, 1313-17; *Cal. Close* 1307-13, 1313-18, *passim*), including the lordship of the Isle of Man (*Cal. Pat.* 1307-13, pp. 300, 411, 461; *Cal. Close* 1318-23, p. 63) and the inheritance of his Scottish sister-in-law Margaret Comyn (*Cal. Pat.* 1317-21, p. 585). He was attacked by the Ordainers, but such Ordinances as were to his detriment were abrogated Oct. 6, 1313 (*Cal. Pat.* 1313-17, pp. 27, 29), and though the Parliament which met at York after Bannockburn wished him to be driven from Court he was retained in deference to the King's wishes (Tout, *Edward II*, p. 102); yet he deserted Edward in 1323 (*Cal. Close* 1318-23, p. 717). He was summoned to Parliament as a baron from March 4, 1308, to October 20, 1332 (*ibid.* Parl. Writs) and died before March 14, 1340 (*Cal. inq. p.m.* viii, No. 271).

<sup>3</sup> Alice, daughter of Alexander Comyn and granddaughter and co-heir of John Earl of Buchan, was married to Henry de Beaumont about 1311 (*Cal. Pat.* 1307-13, p. 267; *Cal. Close* 1307-1313, pp. 341, 497).



en temps etc. par qi mort laglise est ore voyde. dunt de Elyne descendist le dreit a Richard cum a fiz de R. a Aleyn. qore demaunde com a fitz et prie lassise.

*Scrop.* Sire vn Henri quynz. iadiz Counte de Wyncestre fut seisi de ceste auouson. et de mult des autres. et a ceo Eglise presenta vn soun clerc .S. par noun qe a soun presentement fut receu. dunt apres la mort Henri descendist ceste auouson et autrez etc. a Margerie Eleyne et Is(abelle) cum a fillez etc. dunt Margerie cum cele qe fut eyne encomensant torn apres la morte .S. presenta W. soun clerc etc. qe a soun presentement etc. en tenps etc. dunt apres la mort .W. Eleyne vostre aiele <sup>1</sup>celi qore porte le bref<sup>1</sup> cum seure muluele encontinuaunt le torn presenta P. de Norh' cum vous auet dit. par qi mort dunt laglise est ore voide. dunt de Is(abelle) descendist le dreit a R. cum a fille de R. a Agnes et Iohane la femme Henri de B <sup>1</sup>vers queus le bref etc.<sup>1</sup> cum a fyllez et vn heir et issint a A. I. et H. par reson de la couerture ore pent a presenter par reson de torn. iugement.

*Will.* Eleyne presenta cum dreit auouwe et prioms lassise.

*Berr.* Coment auouwe.

*Will.* Lassise vous dirra.

*Berr.* Vous estes hors de poynt dassise qil vous grantent le presentement El(eyne) et vous ad fet parcener du saunc. et dit qele presenta par reson de torn. dunt si vous volet defere ceo qil ad dit. dites coment ele est sole patron.

dunt

*Will.* graunta la parcenerie. et dit qe la purpartie fut fete entre eux. et certeynz auousons assignez a la purpartie M. et ceste aduouson a la purpartie El(eyne) et autr(es) a la purpartie Is(abelle). et issint presenta ele cum soul auouwe lauaunt dit P. de Norh'. pret par assise.

*Scrop.* Ore demaundoms nous iugement desicom nous auoms dit qe Henri presenta et pus M. eynasse par reson de soun torn presenta lequel presentement il ne dediunt pas et pus dioms nous qe El(eyne) presenta par resoun de torn. issint assignoms nous coment apent a

<sup>1-1</sup> Interlined.

her presentation was etc., in time etc., (and) by whose death the church is now vacant. Then from Helen the right descended to Roger as her son, from Roger to Alan (who now demands) as his son. And he prays the assize.

*Scrope.* Sir, one Roger de Quency sometime Earl of Winchester was seised of this advowson, and of many others, and presented to this church his clerk, Hugh by name, who on his presentation was received. And after Roger's death this advowson (and others) descended etc. to Margery, Helen and Elizabeth as to his daughters etc. And after the death of Hugh, Margery, having, as eldest, the first turn, presented her clerk, William etc., who on her presentation etc., in time etc. And after William's death Helen, the grandmother of you who now bring this writ, having the next turn as middle sister, presented, as you have said, Philip of Northampton by whose death the church is now vacant. And from Elizabeth the right descended to John, from John to Alexander as John's son, from Alexander to Margaret and to Alice the wife of Henry of Beaumont against whom the writ etc., as to (two) daughters and one heir, and thus it is now the turn of Margaret, Alice and Henry (by reason of the coverture) to present. Judgment.

*Willoughby.* Helen presented as right patron. And we pray the assize.

BEREFORD C.J. How (right) patron?

*Willoughby.* The assize will tell you.

BEREFORD C.J. You are not at the point of the assize, because he grants<sup>1</sup> to you the presentation by Helen and has made you a parcener by blood, and he says that she presented by reason of turn. Therefore if you want to defeat that which he has said, say how she is sole patron.

Then

*Willoughby* granted the parcenary, and said that the partition had been made between them, and certain advowsons were assigned as the share of Margery, and this advowson as the share of Helen, and others as the share of Elizabeth. And thus she, as sole patron, presented the said Philip of Northampton. Ready (to aver) by (the) assize.

*Scrope.* Now we ask for judgment, since we have said that Roger presented, and afterwards Margery the eldest presented by reason of her turn, and they do not deny that presentation. And then we said that Helen presented by reason of (her) turn. Thus we show how it

<sup>1</sup> It seems that the plural in the text is only the result of misspelling, because the sentence is continued in the singular.



presenter a nous par reson de torn et par veie de ley a ore. et il ne dit autre chose mesqe alegge vn fet. le quel ne defet pas nostre torn comence par M. continue par E. par quei nous prioms bref al Euesqe.

*Will.* Apres la purpartie fete. ele sole presenta al auouson. et soul seroit receu: dunt dioms nous qe ele cum sole auouwe presenta et prioms lassise qe dirra la verite.

*Berr.* Il vous plede fort. car il vous dit qe M. presenta par reson de torn et pur ceo r(espondez): ou donet vn temps. cest a dire le quel ele presenta auant la purpartie fete ou pus.

Et a ceo fut il chace par *Berr.*

*Will.* Sire il ad dyt qe Margerie presenta vn soun clerc en temps etc. sire la vous dioms nous qele purprist sur nous cel presentement. Car ele presenta en temps de Guere.

*Denom.* Quel an et quele guere.

*Iustice.* A ceo nad il mest(er) a respoudre. Car il trauese vostre bref qe veet *tempore pacis*.

*Scrop.* Nous ne purroms fere purpris(e) qe nous auoms comense nostre title en la persone nostre auncestre. et auoms fet la descente auxiben a ly cum a nous. et auoms dyt. qe Margerie presenta cum du dreit qe aly descendy encomensaunt le torn. pur ceo qele fut Eynasse. et pus El(eyne) presenta par reson de mesme le dreit en continuaunt le torn. par quei il semble qe nous ne porroms pas prendre en ceo cas. et prioms bref al Euesqe.

*Spugur.* Si dreit moy descend par moun auncestre ne le pus ieo continuer. auxi ben en temps de guere cum en temps de pes. si pus et si ne sera my acounte purpris.

*Will.* La ou il dyent qe Margerie presenta en comensant son torn. nous vous dioms. qele ne put comenser torn. qele presenta en temps de gwere. qant nous ne la porroms my reclamer. et issint purprist. sanz nostre assent.

*Ber.* Qant vn auouson descend a seors. leynasse dereyuera le primer presentement maugre lor etc.

*Will.* Nous auoms veu deuaunt sire R. de Hengham qe saunz assent de parceners. leynasse ne put soun torn comenser. et nous lentendoms ley uncore.

is our right to present now, by reason of (our) turn and by way of law. And he says nothing else, but alleges a deed which does not defeat our turn, begun by Margery and continued by Helen. Therefore we pray a writ to the bishop.

*Willoughby.* After the partition was made, she presented sole to the advowson,<sup>1</sup> and she would sole be received. Therefore we say that she presented as sole patron, and we pray the assize which will tell the truth.

BEREFORD C.J. He uses a strong plea against you. For he tells you that Margery presented by reason of turn, and therefore answer, or give a time, namely, whether she presented before or after the partition was made.

And to that he was driven by BEREFORD C.J.

*Willoughby.* Sir, (whereas) he has said that Margery presented her clerk in time etc., sir, we tell you that she encroached upon our presentation. For she presented in time of war.

*Denom.* What year, and what war?

*A Justice.* He need not answer to that, because he traverses your writ which says 'in time of peace' (*tempore pacis*).

*Scrope.* We could not encroach on it, for we have begun our title in the person of our ancestor, and we have traced its descent as well to him as to ourselves, and we have said that Margery presented by reason of the right which descended to her, in beginning the turn, because she was the eldest. And afterwards Helen presented by reason of the same right, in continuing the turn. Therefore it seems that we could not have encroached in this case. And we pray a writ to the bishop.

SPIGURNEL J. If my right descends to me by my ancestor, can I not continue it, as well in time of war as in time of peace? I can, and thus it will not be considered encroaching.

*Willoughby.* Whereas they say that Margery presented in beginning the turn, we tell you that she could not begin the turn, for she presented in time of war, when we could not have claimed against her. And thus she encroached without our consent.

BEREFORD C.J. When an advowson descends to sisters, the eldest will derive (from this the right to) the first presentation in spite of them etc.

*Willoughby.* We have seen before Sir Ralph de Hengham that without the consent of the parceners the eldest could not begin her turn, and we understand that this is still the law.

<sup>1</sup> Meaning the church.



*Berr.* Sil voillunt presenter en commun. y pount ben. si noun. leyname dereyuera soun torn par force maugre etc.

Et ceo dit il pur ley.

*Hunt.* Iij. parceners auant la purpartie fete chescun porta soun *quare impedit* vers autre. mes sire R. ne voleynt graunter a nul etc. bref al Euesqe. mes les pria acorder.

*Berr. vt prius.*

pus *Will.* vynt et dit. nous vous dioms com auant. qe le presentement M. fut en tens de guere. et dioms outre qe pus cel presentement la purpartie se fyt entre les seors. dunt il se agreerent. et certeyn auouson assigne en purpartie a chescune. a quey chescune ad presente cum soul auouwe. et dioms qele El(eyne) presenta a ceste Eglise apres la purpartie fete cum soul auouwe. par qei nous prioms lassise des damages. pur ceo qe le presentement est conu. et bref al Euesqe.

*Scrop.* Le presentement qe Margerie fyt. fut par reson du torn. et ceo fere ley dona de sa prerogatiue cum Eynasse. dunt cele ne put estre acounte purprise. et ore il aleggent vne especialte fete etc. a defendre le torn qe commune ley nous doune. et qe comence fut cum auant est dyt. etc. et de ceo ne mustrent ren en court qe testmoigne la purpartie iugement.

*Berr.* Fut la purpartie fete. respondes si vous auet le vostre. et si sic suffret qe les autres eyunt lor purpartie.

Et sic pendet.

## II.<sup>1</sup>

<sup>2</sup>Dr(eyn presentement).<sup>2</sup>

Aleyn <sup>3</sup>de la southport<sup>3</sup> porta vn assise de dreyn present(ement) vers Henri de B.<sup>4</sup> et Alice sa femme de la Eglise de Eymesby<sup>5</sup> et dit qe vn<sup>6</sup> Eleyn<sup>7</sup> presenta la dreyn persone<sup>8</sup> par qi mort la eglise est ore voyde, de Elyne<sup>9</sup> descend(ist) le droit del presentement a Roger <sup>2</sup>de Roger<sup>2</sup> a Aleyn et<sup>10</sup> pria lassise.

*Scrop.* Vn Roger de Rony<sup>11</sup> fut seisi del man(oir) de E<sup>5</sup> a qei lauoweson de cel Eglise est appendant en tens etc. qi<sup>12</sup> presenta vn<sup>13</sup> soun clerke<sup>13</sup> De Roger descendy <sup>14</sup>a Mag(er)ie Elizabez et Elyne<sup>14</sup> cum a <sup>15</sup>soeres et vn heir<sup>15</sup> Margerie la eynesce soer<sup>16</sup> presenta a m(esme) la

<sup>1</sup> From C. Compared with T.    <sup>2-2</sup> Om. T.    <sup>3-3</sup> le Southe T.    <sup>4</sup> Beaumont T.    <sup>5</sup> Eynesby T.    <sup>6</sup> vne T.    <sup>7</sup> Eleyne T.    <sup>8</sup> Add.: A par noun etc. T.    <sup>9</sup> Aleyn T.    <sup>10</sup> etc. T.    <sup>11</sup> Kemy Cnte de Wyncestre T.    <sup>12</sup> Om. T.    <sup>13</sup> etc. de Eunok etc. T.    <sup>14-14</sup> etc. a Mariorie Eleine et Elizabete T.    <sup>15-15</sup> iij feiles etc. dont de T.    <sup>16</sup> Add.: etc. T.

BEREFORD C.J. If they want to present in common, certainly they may ; if not, the eldest will derive her turn necessarily, despite etc.

And this he said as (a statement) of law.

*Huntingdon.* Three parceners before a partition was made ; every one brought her *quare impedit* against (the) other(s). But Sir Ralph would not grant to any one etc. a writ to the bishop, but asked them to come to an agreement.

BEREFORD C.J. (as before).

Afterwards *Willoughby* came and said, We tell you as before, that the presentation by Margery was in time of war, and we further say that after that presentation the partition was made between the sisters, when they made an agreement, and certain advowson(s) (were) assigned as a share of every one, by which every one did present as sole patron. And we say that Helen presented as sole patron to this church after the partition was made. Therefore we pray the assize as to the damages (because the presentation is confessed) and a writ to the bishop.

*Scrope.* The presentation which Margery made was by reason of her turn, and this the law allowed her, by her prerogative as the eldest. Therefore that cannot be accounted encroachment. And now, in order to deny the turn which the common law gives us, and which was begun as has been said before etc., they allege a specialty made etc. And as to that they show in court nothing that would witness the partition. Judgment.

BEREFORD C.J. Was the partition made ? Answer whether you have your share, and if so, then let the others have theirs.

And thus the cause is pending.

## II.

### Last presentation.

Alan la Zusche brought an assize of last presentation against Henry of Beaumont and Alice his wife, for the church of Eynesbury, and said that one Helen presented the last parson by whose death the church is now void. From Helen the right of the presentation descended to Roger, from Roger to Alan. And he prayed the assize.

*Scrope.* One Roger de Quency was seised of the manor of Eynesbury to which the advowson of this church is appendant, in time etc. And he presented a clerk of his. From Roger (it) descended to Margery, Helen and Elizabeth, as (three) sisters and one heir. Margery, the eldest sister, presented to the said church, by reason of the turn as



Eglise par resoun de torne cum eynesse soer. vn son clerke<sup>1</sup> etc. par qi mort la Eglise se voyda.<sup>2</sup> Dount Eleyne aunc(estre)<sup>3</sup> Aleyn cum seore melneyne<sup>4</sup> par resoun del seconde torn<sup>5</sup> continuant <sup>6</sup>le torne<sup>6</sup> <sup>7</sup>de leynesse<sup>7</sup> seore presenta mesme cely.<sup>8</sup> A. qil diunt qe a soun. presentement fut receu. dount de Margerie issit Robert <sup>9</sup>et de Ion de(nz) fferes et<sup>9</sup> de Elyne issit Roger,<sup>10</sup> de Roger.<sup>10</sup> Aleyn <sup>11</sup>de la South.<sup>11</sup> Et de Elyzabethe issit<sup>12</sup> vne<sup>13</sup> Alice la femme Henri de Beaumond et vne Is(abelle) de<sup>13</sup> Ic.<sup>13</sup> issit vn<sup>13</sup> Thom. <sup>14</sup>qe est deyn age et<sup>14</sup> en la garde <sup>15</sup>H. de B.<sup>15</sup> par comission le Roy. et Henri vous dit qe Alice sa femme et Thom. soun parcener sunt isseu de <sup>16</sup>la punesse<sup>16</sup> seore et ceo est la terce voydance. et<sup>13</sup> issint appent a ly a presenter par resoun de sa femme et Thom.<sup>17</sup> qe est en sa garde. et demandoms iugement si<sup>18</sup> cesti bref de dreyn present entre parceners si priue de sanke ygyse.<sup>19</sup>

*Will.* Tant<sup>20</sup> amount qe Eleyne nostre auncestre ne presenta pas cum soul auowe. nous voloms auer qe ele<sup>21</sup> presenta cum soul auowe<sup>13</sup> et cum soul<sup>13</sup> patroun prest<sup>13</sup> etc.<sup>13</sup>

*Ber.* Vous ne<sup>13</sup> r(espon)ez nent al presentement Margerie leynesse seore <sup>22</sup>qe presenta cum torn et Eleyne continua cum torn.<sup>22</sup>

*Will.* - Apres la mort <sup>23</sup>le commune auncestre<sup>23</sup> la seueraunz<sup>24</sup> se fit entre lez<sup>13</sup> .iij. seores issy qe le man(oir) de A. ensemblement<sup>25</sup> etc. fut alote a la purpartie .M.<sup>26</sup> et le man(oir) de Enech.<sup>27</sup> ensemblement etc. a<sup>28</sup> la purpartie Elizabet. apres quel seueranz chescune seore presenta<sup>29</sup> cum soul auowe.

*Denom.* Nous auoms dit qe .M.<sup>30</sup> leynesse etc. presenta etc. encom(m)enc(e)ant <sup>6</sup>le torn,<sup>6</sup> qe chet en ley. Dounc si vous volez <sup>31</sup>a co(mmun)e re(spondre).<sup>31</sup> qe chiet en ley de terre : il vous<sup>13</sup> couent monst(er)er espe(ciau)te et vous ne monstrez pas<sup>32</sup> : iugement.

*Will.* Assez nous suffit <sup>33</sup>a monst(er)er et auer<sup>33</sup> la seueranz, et qe pus<sup>13</sup> nostre auncestre presenta cum soul auowe <sup>34</sup>et qe<sup>34</sup> chescune est seisi <sup>13</sup>de certeyn terre et<sup>13</sup> de certeyn auoweson en seueralte pur sa purpartie.<sup>35</sup>

*Pass.* La ou il dient presenta<sup>36</sup> par reson de torn : nous vous

<sup>1</sup> *Add* : C par noun *T.*    <sup>2</sup> *Add* : etc. *T.*    <sup>3</sup> *Add* : sire *T.*    <sup>4</sup> melewelle *T.*  
<sup>5</sup> *Add* : en *T.*    <sup>6-6</sup> lattorne *T.*    <sup>7-7</sup> la eisnesce *T.*    <sup>8</sup> cest(i) *T.*    <sup>9-9</sup> etc.  
de Robert Ion de Iohan Felice *T.*    <sup>10</sup> Robert *T.*    <sup>11-11</sup> le Southe *T.*    <sup>12</sup> issirent  
*T.*    <sup>13</sup> *Om.* *T.*    <sup>14-14</sup> qest *T.*    <sup>15-15</sup> Henri de Beaumond *T.*    <sup>16-16</sup> Elizabete  
la p(ui)snee *T.*    <sup>17</sup> de *T* etc. *T.*    <sup>18</sup> a *T.*    <sup>19</sup> gise etc. *T.*    <sup>20</sup> *Add* :  
com *T.*    <sup>21</sup> le *T.*    <sup>22-22</sup> qe comencea la torne et Eleyne cel torne continua *T.*  
<sup>23-23</sup> le continuance (there was a *la*, but the *a* is cancelled and *e* written above the  
line) *T.*    <sup>24</sup> added above the line *C.* seueralte *T.*    <sup>25</sup> *Add* : ofue lauoweson *T.*  
<sup>26</sup> Marg(er)ie *T.*    <sup>27</sup> Eynesby *T.*    <sup>28</sup> est en la purpartie Eleyne nostre aele et  
le manoir et le mair. de. *C.* ala p(lus) puisnesce etc. a *T.*    <sup>29</sup> *Add* : a sa eglise *T.*  
<sup>30</sup> Mariorie *T.*    <sup>31-31</sup> cere (?) *T.*    <sup>32</sup> rien qe (v) veut *T.*    <sup>33-33</sup> dauerrer *T.*  
<sup>34-34</sup> etc. et *T.*    <sup>35</sup> *Add* : iugement etc *T.*    <sup>36</sup> qe Marg. presenta vn etc *T.*

eldest sister, a clerk of hers etc., by whose death the church became vacant. Then Helen, Alan's ancestress, as middle sister, by reason of the second turn, in continuing the turn of the eldest sister, presented the same Philip who they say was received on her presentation. Then from Margery there issued Robert, etc., <sup>1</sup>from Robert, John, and from John, Felicia<sup>1</sup>; from Helen there issued Roger, and from Roger, Alan la Zusche. And from Elizabeth there issued (one John, and Alexander, and from Alexander) one Alice the wife of Henry of Beaumont, and one Margery, who is within age and in the wardship of Henry of Beaumont, by the King's commission. And Henry tells you that Alice his wife and Margery her parcener are the issue of the youngest sister, and this is the third vacancy, and thus it belongs to him to present by reason (of the turn) of his wife and Margery who is in his wardship. And we demand judgment whether this writ of last presentation lies between parceners so closely related by blood.

*Willoughby.* That amounts to this, that Helen our ancestress did not present as sole patron. We are willing to aver that she presented as sole (advocate and as sole) patron.<sup>2</sup> Ready etc.

BEREFORD C.J. You do not answer to the presentation by Margery the eldest sister, who presented as (in) turn, and Helen continued as (in) turn.

*Willoughby.* After the death of the common ancestor the severance was made between the three sisters, so that the manor of Merkengfeld together etc. was allotted to the share of Margery, and the manor of Eynesbury together etc. to the share of Elizabeth. And after that severance each sister presented as sole patron.

*Denom.* We have said that Margery, the eldest etc., presented etc., in beginning the turn. And that is given by the law. Therefore, if you want to answer<sup>3</sup> to the common rule, which is given by the law of the land, you must show specialty, and you do not show (any). Judgment.

*Willoughby.* It is quite enough for us to show and to aver the severance, and that our ancestress had afterwards presented as sole advocate, that each (sister) is seised of a certain land and of a certain advowson in severalty, as her share.

*Passeley.* Whereas they say that Margery<sup>4</sup> presented by reason

<sup>1-1</sup> Supplied from *T*.

by 'patron,' which is more usual in English.

<sup>2</sup> 'Patron' and 'advocate' are synonymous. In the passages where *advoue* alone occurs, it has been rendered

<sup>3</sup> In the sense of 'to oppose.'

<sup>4</sup> Supplied from *T*.



dioms qe cel presentement ne fut qe<sup>1</sup> occupacion, qe <sup>2</sup>ceo fut<sup>2</sup> en tens de guerre.

*Scrop.* En quel guerre ?

Et non alocatur.

*Scrop.* Quel<sup>3</sup> qe ceo fut<sup>4</sup> en tens de pes ou en tens de guerre : b(ie)n list <sup>5</sup>al heir<sup>5</sup> continuer soun soun<sup>6</sup> (*sic*) heritage la ou put assigner la possession en<sup>7</sup> ascun auncestre auant et vous auez conue le present(ement) auant,<sup>8</sup> et<sup>6</sup> <sup>9</sup>M. cum<sup>9</sup> torne cum eynesse seor etc. et en pursewant cel torn : Eleyn presenta etc. iugement si vous deuez estre r(ece)u saunz espe(ciau)te.

*Will.* Ceo ne fut qe<sup>1</sup> occupacion : qe si ele eust presente en tens de pes : nous la eussoms dedit et pur ceo qe ceo fut en tens de gwerre : nous ne <sup>10</sup>poeym(es) encontre estre, car<sup>10</sup> parcener ne presentera iammes<sup>11</sup> sanz sez parceners.

*Berr.* Vous dites <sup>12</sup>mal care parcener ne presentera<sup>12</sup> iammes en commune sanz assent, mes maugre touz lez autres : la eynesse<sup>11</sup> auera soule le<sup>13</sup> present(ement) par resoun de torne *et sic de singulis*.

*Will.* Qe la seuerance fut fet apres la mort le commune auncestre : et <sup>6</sup>qe chescune se<sup>6</sup> agreea de sa purpartie, et chescune presenta a sa eglise <sup>6</sup>cum soul patron<sup>6</sup> et qe Eleyn<sup>14</sup> presenta cum soule auowe<sup>15</sup> pus la seuerance<sup>16</sup> prest etc.

*Denom.* La ou vous dites qe chescu(n) <sup>6</sup>presenta cum<sup>6</sup> soul patroun : <sup>17</sup>nous vous dioms<sup>17</sup> qe Elizabethe nostre auncestre ne<sup>18</sup> presenta vnq(e) prest etc. et ceo est la terce voydance et nous sum(us) iseu de la punesse soer iugement.

Et non allocatur : qe ele ne present(a) vnq(e) qe <sup>6</sup>si ele<sup>18</sup> vst presente<sup>6</sup> apres la departye<sup>19</sup> fet ele pout<sup>20</sup> auoir aliene, ou <sup>21</sup>si ele vst suffer<sup>21</sup> vn estranger presenter<sup>22</sup> : ceo ne tornera<sup>23</sup> mye a<sup>6</sup> lez autres en preiudice etc.

### Notes from the Record.

#### I.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 29 recto. Leicestershire.  
Written by Luding?

Assisa venit recognitura quis aduocatus tempore pacis presentauit vltimam personam que mortua est ad ecclesiam de Merkyngfeld que vacat etc. Et cuius aduocacionem Alanus la Zusche in Curia hic clamat uersus Henricum

<sup>1</sup> forse vn T. <sup>2-2</sup> se fist T. <sup>3</sup> le quel T. <sup>4</sup> soit T. <sup>5-5</sup> a Henri de T. <sup>6-6</sup> Om. T. <sup>7</sup> en le persone T. <sup>8</sup> Marg. T. <sup>9-9</sup> qe comencea le T. <sup>10-10</sup> poums contreesti(s)er qe T. <sup>11</sup> Add: soul T. <sup>12-12</sup> talent, parceners ne presentont T. <sup>13</sup> Add: primer T. <sup>14</sup> Add: nostre auncestre T. <sup>15</sup> Add: etc. et T. <sup>16</sup> seueralte fait T. <sup>17-17</sup> a sa eglise presenta etc. T. <sup>18</sup> Added above the line. <sup>19</sup> soun cancelled by points. <sup>20</sup> put T. <sup>21-21</sup> soeffert T. <sup>22</sup> Add: et T. <sup>23</sup> turnereit T.

of turn we tell you that that presentation was only occupation, because that was in time of war.

*Scrope.* In what war?

And this was not allowed.

*Scrope.* Whether that was in time of peace or in time of war, the heir is well allowed to continue his inheritance where he can show possession in any ancestor before. And you have admitted the presentation before. And Margery as (in) turn, as eldest sister, etc. And in pursuing that turn Helen presented etc. Judgment whether you ought to be received without specialty.

*Willoughby.* That was nothing but occupation. For if she had presented in time of peace, we should have contradicted her. And because it was in time of war, we could not oppose her. For a parcener will never present without his parceners.

BEREFORD C.J. You are mistaken, for a parcener will never present in common, without consent (of his parceners), but the eldest will have sole the presentation by reason of turn, in spite of all the others. And the same is true of each one.

*Willoughby.* That the severance was made after the death of the common ancestor, and that each one agreed as to her share, and that each one presented to her church as sole patron, and that Helen presented as sole patron, since the severance. Ready etc.

*Denom.* Whereas you say that each one presented as sole patron, we tell you that Elizabeth, our ancestress, never presented. Ready etc. And this is the third vacancy, and we are the issue of the youngest sister. Judgment.

And this was not allowed, because she never presented. For if she had presented after the partition was made, she could have alienated, or if she had suffered a stranger to present that would not turn to the prejudice of the others, etc.

### Notes from the Record.

#### I.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 29 recto. Leicestershire.

Written by Luding'.

An assize comes to find what patron in time of peace presented the last parson, who is dead, to the church of Markingfield, which is void etc., and of which Alan la Zusche claims in the Court here the advowson against Henry



**Notes from the Record**—*continued.*

de Bello Monte et Aliciam vxorem eius. Et vnde Idem Alanus per Thomam de Thurmastone attornatum suum dicit quod quedam Elena la Zusche auia predicti Alani cuius heres etc. vltimo presentauit ad predictam ecclesiam quendam Philippum de Norhamptone clericum suum qui ad presentacionem suam fuit admissus et institutus tempore pacis tempore domini Edwardi Regis patris domini Regis nunc nunc (*sic*) qui vltimo obiit persona in eadem per cuius mortem predicta ecclesia modo vacat etc. Et de ipsa Elena descendit Ius presentandi cuidam Rogero vt filio et heredi etc. Et de ipso Rogero descendit Ius presentandi isti Alano vt filio et heredi etc.

Et Henricus et Alicia per Willelmum de Poyntone attornatum suum veniunt. Et bene cognoscunt quod predicta Elena vltimo presentauit ad predictam ecclesiam predictum Philippum clericum suum. set dicunt quod ad ipsos Henricum et Aliciam pertinet ad predictam ecclesiam ad presens presentare quia dicunt quod predicta aduocacio dudum fuit in seisina cuiusdam Rogeri de Quency Comitis Wynton(ie) qui quidem Rogerus ad eandem ecclesiam presentauit quemdam Hugonem de la Haye clericum suum qui ad presentacionem suam fuit admissus et institutus tempore pacis tempore domini Henrici Regis aui domini Regis nunc. Et de ipso Rogero descendit Ius etc. quibusdam Margarete Elene et Elizabethe ut filiabus et heredi. Et dicunt quod vacante predicta ecclesia per mortem predicti Hugonis etc. predicta Margareta soror ante nata ratione primi turni etc. presentauit ad eandem ecclesiam quemdam Willelmum de Bondone clericum suum qui ad presentacionem suam fuit admissus et institutus tempore pacis tempore domini Henrici Regis aui domini Regis nunc. Et postea vacante predicta ecclesia per mortem predicti Willelmi de Bondone predicta Elena antecessor predicti Alani soror media racione secundi turni presentauit ad predictam ecclesiam predictum Philippum de Norhamptone clericum suum qui ad presentacionem suam fuit admissus et institutus tempore pacis tempore predicti Edwardi Regis patris etc. per cuius mortem predicta ecclesia modo vacat sicut predictum est. Et dicunt quod de predicta Elizabetha sorore post nata descendit Ius etc. cuidam Iohanni Comyn vt filio et heredi Et de ipso Iohanne quia obiit sine herede de se descendit Ius etc. cuidam Alex(andr)o vt filio et heredi etc. Et de ipso Alex(andr)o descendit Ius etc. ipsi Alicie vxori ipsius Henrici et cuidam Margarete sorori eiusdem Alicie vt filiabus et heredi. que quedam Margareta est infra etatem et in custodia ipsius Henrici et ea racione pertinet ad ipsos Henricum et Aliciam ad predictam ecclesiam ad presens presentare racione tercii turni etc. Et hoc parati sunt verificare vnde petunt iudicium etc.

Et Alanus dicit quod per presentacionem ipsius Margarete assisa ista prorogari non debet etc. Dicit enim quod presentacio illa facta fuit tempore guerre etc. Et dicit quod postmodum de communi consensu ipsarum participum et heredum plene etatis existencium facta fuit particio inter easdem de terris. tenementis. feodis et aduocacionibus (ecclesiarum) hereditatis predicte.

**Notes from the Record**—*continued.*

of Beaumont and Alice his wife, and concerning which matter the said Alan says by Thomas of Thurmastone, his attorney, that one Helen la Zusche, grandmother of the said Alan whose heir etc., did last present to the said church one Philip of Northampton, a clerk of hers, who on her presentation was admitted and instituted in time of peace in the time of Lord Edward the King, father of our Lord the present King—who died last as parson in the same and by whose death the said church is now vacant etc. And from that Helen the right to present descended to one Roger as the son and heir etc. And from that Roger the right to present descended to this Alan as the son and heir etc.

And Henry and Alice come by William of Poyntone, their attorney, and they fully admit that the said Helen last presented to the said church the said Philip, her clerk. But they say that at present it is the right of them, the said Henry and Alice, to present to the said church—for they say that the said advowson was at one time in the seisin of one Roger of Quency, Earl of Winchester, and that Roger presented to the same church one Hugh de la Haye, a clerk of his, who on his presentation was admitted and instituted in time of peace in the time of Lord Henry the King, grandfather of our Lord the present King. And from that Roger the right etc. descended to one Margaret, one Helen, and one Elizabeth, as to daughters and one heir. And they say that, the said church being vacant by the death of the said Hugh etc., the said Margaret, the eldest sister, did by reason of the first turn etc. present to the same church one William of Bondone, a clerk of hers, who on her presentation was admitted and instituted in time of peace in the time of Lord Henry the King, grandfather of our Lord the present King. And afterwards, the said church being vacant by the death of the said William of Bondone, the said Helen, ancestress of the said Alan, the middle sister, did by reason of the second turn present to the said church the said Philip of Northampton, her clerk, who on her presentation was admitted and instituted in time of peace in the time of the said Edward the King, father etc., by whose death the said church is now vacant, as has been said. And they say that from the said Elizabeth, the youngest sister, the right etc. descended to one John Comyn as to the son and heir, and from that John, because he died without heir of his body, the right etc. descended to one Alexander as to the son and heir etc. And from that Alexander the right etc. descended to this Alice, wife of the said Henry, and to one Margaret, sister of the same Alice, as to daughters and one heir. And that Margaret is below age and in the wardship of this Henry. And for that reason it belongs to the said Henry and Alice to present to the said church at present by reason of the third turn etc. And this they are ready to aver, concerning which matter they pray judgment etc.

And Alan says that by the presentation of that Margaret this assize ought not to be prorogued etc. For he says that that presentation was made in time of war etc. And he says that afterwards, by common consent of the said parceners and heirs, they being of full age, there was made a partition between them of the lands, tenements, fees, and advowsons of churches of



**Notes from the Record**—*continued.*

Ita quod aduocacio ecclesie predicte de Merkingfeld simul cum aliis aduocacionibus etc. assignata fuit ipsi Elene auie predicti Alani etc. Et aduocacio ecclesie de Eynesbury in Comitatu Hunt(ingdon) assignata fuit predicte Elizabethhe in propartem suam de aduocacionibus etc. et similiter assignate fuerunt alie aduocaciones etc. ipsi Margarete in propartem etc. de quibus terris tenementis feodis et aduocacionibus eedem heredes et participes fuerunt seisite et inde se tenuerunt contentas etc. Et dicit quod predicta Elizabetha que desponsata fuit cuidam Alex(andr)o Comyn antecessori ipsarum Alicie et Margarete sororis ipsius Alicie simul cum predicto Alex(andr)o viro suo post predictam partitionem inter eos factam. vacante ecclesia predicta de Eynesbury, ad eandem presentauit quendam Magistrum Ricardum de Clifford clericum suum tempore pacis etc. qui ad presentacionem suam fuit admissus et institutus etc. Et vacante predicta ecclesia de Merkyngfeld etc. predicta Elena antecessor ipsius Alani racione propartis sue etc. ad eandem ecclesiam de Merkyngfeld presentauit predictum Philippum clericum suum etc. tanquam solus patronus eiusdem ecclesie, post predictam partitionem factam. Quam quidem partitionem et seisinam earundem participum de propartibus suis post partitionem factam etc. Idem Alanus paratus est verificare etc.

Et Henricus et Alicia dicunt quod cum ipsi superius allegarunt quod post mortem predicti Rogeri communis antecessoris etc. predicta Margareta soror Eynecia presentauit ad predictam ecclesiam predictum clericum suum racione primi turni vt predictum est, et postea predicta Elena secunda soror etc. ad eandem ecclesiam presentauit racione secundi turni etc. que quidem presentaciones non sunt dedicte, nec Idem Alanus aliud ostendit ad precludendum ipsos Henricum et Aliciam de turno suo presentandi etc. in ista tercia vacacione nisi allegando predictam partitionem fuisse factam. de qua partitione nullum factum speciale ostendit nisi predictam verificacionem patrie etc. petunt iudicium etc.

Et Alanus dicit vt prius quod ipse paratus est per patriam verificare predictam partitionem, et seisinam predictarum participum etc. vt predictum est et exquo predicti Henricus et Alicia verificacionem illam non admittunt petit iudicium etc.

Dies datus est eis de audiendo inde iudicio suo hic in octabis sancti Hillarii in eodem statu quo nunc etc. Et preceptum est vicecomiti quod habeat corpora recognitorum hic ad prefatum terminum etc.

Postea ad diem illum venerunt partes predicte. Et datus est eis dies hic a die Pasche in xv dies prece parcium. Et preceptum est vicecomiti quod habeat corpora recognitorum hic ad prefatum terminum etc.

Postea ad diem illum venerunt partes predicte per attornatos suos. Et datus est eis dies hic in crastino sancti Iohannis Baptiste prece querentis etc. Et vicecomes habeat corpora recognitorum hic ad prefatum terminum etc.

**Notes from the Record**—*continued.*

the said heritage, so that the advowson of the said church of Markingfield, together with other advowsons etc., was assigned to the said Helen, grandmother of the said Alan etc. And the advowson of the church of Eynesbury, in the county of Huntingdon, was assigned to the said Elizabeth in her purparty of the advowsons etc. and likewise other advowsons etc. were assigned to the said Margaret in (her) purparty etc. And of those lands, tenements, fees, and advowsons, the said heirs and parceners were seised and in that respect they held themselves satisfied (*inde se tenuerunt contentas*) etc. And he says that the said Elizabeth, who was married to one Alexander Comyn, ancestor of the said Alice and of Margaret, the said Alice's sister, did, together with the said Alexander, her husband, after the said partition had been made between them, and while the said church of Eynesbury was vacant, present to it, in time of peace etc., one Master Richard of Clifford, a clerk of hers, who on her presentation was admitted and instituted etc. And the said church of Markingfield being vacant etc., the said Helen, ancestress of this Alan, presented to it, by reason of her purparty etc., as sole patron of that church, after the said partition had been made, the said Philip, a clerk of hers etc. And the said Alan is ready to aver etc. that partition and the said parceners' seisin of their (respective) purparties etc.

And Henry and Alice say that they demand judgment etc., since they have alleged before (*superius*) that after the death of Roger, the common ancestor etc., the said Margaret, the eldest sister, presented to the said church her said clerk by reason of the first turn, as has been said before, and (that) afterwards the said Helen, the second sister etc., presented to the said church by reason of the second turn etc., and those presentations have not been denied nor does the said Alan show anything else to preclude the said Henry and Alice from their turn of presenting etc. on this third vacancy, except that he alleges that the said partition was made, and he shows no specialty (*factum speciale*) as to that partition except only the said averment by the country etc.

And Alan says as before that he is ready to aver by the country the said partition and the seisin of the said parceners etc., as has been said before; and since the said Henry and Alice do not admit that averment, he demands judgment etc.

A day to hear their judgment in this matter was given them here on the octaves of St. Hilary, in the same state as now etc. And the Sheriff was commanded that he have here the bodies of the recognitors at the said term etc.

Afterwards on that day there came the said parties. And by request of the parties a day was given them here on the quindene of Easter. And the Sheriff was commanded that he have the bodies of the recognitors here at the said term etc.

Afterwards on that day there came the said parties by their attorneys. And by request of the complainant a day was given them here on the morrow of St. John the Baptist etc. And let the Sheriff have the bodies of the recognitors here at the said term etc.



**Notes from the Record**—*continued*.

Postea ad diem illum venerunt partes predictae per attornatos suos. Et datus est eis dies hic in octabis sancti Michaelis prece parcium etc. Et vicecomes habeat corpora recognitorum hic ad prefatum terminum etc.

Postea ad diem illum venerunt partes predictae per attornatos suos. Et datus est eis dies de audiendo iudicio suo hic a die sancti Hillarii in xv dies prece querentis in eodem statu quo nunc. Et vicecomes habeat corpora recognitorum hic ad prefatum terminum etc.

Ad quem diem venerunt partes per attornatos suos. Et de assensu parcium datus est eis dies de audiendo iudicio suo hic a die Pasche in tres septimanas in statu quo prius etc. Et vicecomes habeat corpora recognitorum hic ad prefatum terminum etc.

**II.**

**De Banco Roll 195a, Mich. 6 Edw. II., membr. 352 recto. Leicestershire. Wolmer<sup>1</sup> (?).**

Assisa vltime presentacionis quam Alanus Lazuche in Curia hic arrain- (auit) uersus Henricum de Bello Monte et Aliciam vxorem eius de aduocacione ecclesie de Markynfelde ponitur in respectum hic vsque in octabis sancti Hillarii per defectum Iuratorum quia nullus venit.

Ideo vicecomes habeat corpora etc.

**17. THE ABBOT OF BATTLE v. THE ARCHBISHOP OF CANTERBURY.<sup>2</sup>**

Dreyn presentement.

Labbe<sup>3</sup> de la Bataille<sup>4</sup> porta soun assise de drein presentement uers <sup>5</sup>Robert Erceuesque<sup>5</sup> de Cant(erbury) etc. qi vient<sup>6</sup> et dit qil auoit<sup>7</sup> rien<sup>8</sup> ne rien<sup>8</sup> ne claim(a) si noun com ordinar(y) etc.

Et alias<sup>9</sup> habuit breue<sup>10</sup> episcopo sine dampnis etc.

**Note from the Record.**

**De Banco Roll 195a, Mich. 6 Edw. II., membr. 337 recto. Kent. Written by Luding<sup>1</sup>.**

Assisa venit recognitura quis aduocatus tempore pacis presentauit vltimam personam, que mortua est ad ecclesiam de Haukehurst que vacat et cuius aduocacionem Abbas de Bello clamat uersus Robertum Archiepiscopum Cantuar(iensem) etc. Et vnde idem Abbas per attornatum suum dicit quod quidam Henricus quondam Abbas predecessor etc. vltimo presentauit

<sup>1</sup> Above this name appears the name of *Radulphus Comyn de Northfelde*. This latter is, however, probably a note taken by the clerk of a name which may have had to be inserted in a record. <sup>2</sup> Reported by *C*, *P*, and *T*. Text from *T*. Compared with *C*, *P*. Headnote from *P*. No headnote in *C* or *T*. <sup>3</sup> Nota labbe *C*. <sup>4</sup> Hull *C*. Baille *P*. <sup>5-5</sup> le Eueske *C*. Leuesqe *P*. <sup>6</sup> vint *C*. vynt *P*. <sup>7</sup> nauoit *C*, *P*. <sup>8</sup> riens *C*, *P*. <sup>9</sup> Om. *C*, *P*. <sup>10</sup> Add: de *P*.

**Notes from the Record—continued.**

Afterwards on that day there came the said parties by their attorneys. And by request of the parties a day was given them here on the octaves of Michaelmas etc. And let the Sheriff have the bodies of the recognitors here at the said term etc.

Afterwards on that day there came the said parties by their attorneys. And by request of the complainant a day to hear their judgment was given them here on the quindene of St. Hilary in the same state as now. And let the Sheriff have the bodies of the recognitors here at the said term etc.

And on that day there came the parties by their attorneys. And with the assent of the parties a day to hear their judgment was given them here in three weeks from Easter in the same state as before etc. And let the Sheriff have the bodies of the recognitors here at the said term etc.

**II.**

**De Banco Roll 195a, Mich. 6 Edw. II., membr. 352-recto. Leicestershire. Wolmer(?).**

The assize of last presentation, which Alan Lazuche did arraign in the Court here against Henry of Beaumont and Alice his wife, for the advowson of the church of Markingfield, is put in respite here until the octaves of St. Hilary for default of jurors, because none has come.

Therefore let the Sheriff have the bodies etc.

### 17. THE ABBOT OF BATTLE *v.* THE ARCHBISHOP OF CANTERBURY.

Last presentation.

The Abbot of Battle<sup>1</sup> brought his assize of last presentation against Robert Archbishop of Canterbury etc., who came and said that he had nothing and claimed nothing save as ordinary etc.

And on another day he had a writ to the bishop without damages etc.

**Note from the Record.**

**De Banco Roll 195a, Mich. 6 Edw. II., membr. 337 recto. Kent. Written by Luding'.**

An assize comes to find what patron in time of peace presented the last parson, who is dead, to the church of Hawkhurst,<sup>2</sup> which is vacant and of which the Abbot of Battle claims the advowson against Robert, Archbishop of Canterbury etc. And concerning which the said Abbot says by his attorney that one Henry, sometime Abbot, predecessor etc. did last present

<sup>1</sup> John of Northburn, 1311-18      hurst, Kent, belonged to Battle Abbey  
(Dugdale, *Mon.* iii, 235).      at the Dissolution (*ibid.* 257-8).

<sup>2</sup> The manor and rectory of Hawk-



**Note from the Record**—*continued.*

ad predictam ecclesiam quendam Galfridum de Holmtege (?) clericum suum qui ad presentacionem suam fuit admissus et institutus etc. tempore pacis tempore Edwardi Regis patris domini Regis nunc per cuius mortem predicta ecclesia modo vacat etc.

Et Archiepiscopus per attornatum suum venit Et dicit quod ipse nichil clamat in aduocacione predictae ecclesie nisi vt Diocesanus loci etc.

Ideo predictus Abbas habeat breue eidem Archiepiscopo quod non obstante reclamacione ipsius Archiepiscopi ad presentacionem predicti Abbatis ad predictam ecclesiam idoneam personam admittat etc.

Postea quia predictus Archiepiscopus obiit, antequam idoneam personam admisit etc. Mandatum est custodi spiritualitatis Archiepiscopatus predicti quod admittat etc.

Postea in Crastino sancti Iohannis Baptiste proximo sequent(i) Dominus Rex mandauit breue suum Iusticiariis suis hic quod mitterent inde recordum coram Iusticiariis suis ad p(rim)am assisam in Comitatu Kancie.

Et eis mittitur per Thomam de Thornetone etc.

18. THE PRIOR OF LINTON *v.* THE BISHOP OF ELY.<sup>1</sup>I.<sup>2</sup>

Assise de dreyn present(ement).

<sup>3</sup>Vn Rand<sup>3</sup> Prior de Lintone porta vne assise de drein present(ement) de la vicar(ie) de la Eglise de Lintone et dit qe vn Aleyn iadis prior<sup>4</sup> predecessour etc. presenta vn soun clerke Willem<sup>5</sup> par noun etc. *tempore* <sup>6</sup>*pacis, tempore Regis Edwardi patris Regis. nunc*<sup>6</sup> par qi mort la eglise <sup>7</sup>voyda et<sup>7</sup> est ore voyde et pria lassise.

*Toud.* A Lintone <sup>8</sup>y luy ad<sup>8</sup> Couent, colligion, professioun, <sup>9</sup>ordre reule ne commune seal.<sup>9</sup> ne R. nest prior perpetuel eynz remuable a la volunte labbe de <sup>10</sup>seynt Iake etc.<sup>10</sup> iugement si<sup>11</sup> cesti bref deyue estre<sup>7</sup> receu.

*Scrop.* Y ly ad plee ceynz et ad este ou il ad plede cum Prior et sez predecessours plederent<sup>7</sup> et presenterent com Priors a la vicarie auant dit et il est Prior perpetuel <sup>12</sup>et presenta<sup>12</sup> etc.

*Toud.* <sup>13</sup>Nent perpetuel eynz remuable *ut supra*.<sup>13</sup> et si troue seit perpetuel : nous dioms qil nad riens en lyntone si non cum persone de la Eglise de Lintone nent nome persone iugement du bref.

<sup>1</sup> Reported by *C*, *P*, *T*, and *L*.      <sup>2</sup> From *C*. Compared with *P*, *T*. Head-note from *P*.      <sup>3-3</sup> Randulf *P*.      Roulond *T*.      <sup>4</sup> *Add* : de *L*. *T*.      <sup>5</sup> William Hardel *P*. Will. Hard. *T*.      <sup>6-6</sup> patris Regis *E*. nunc *P*. domini Regis *E*. patris etc. *T*.      <sup>7</sup> *Om.* *T*.      <sup>8-8</sup> ny ad *P*. ni ad il *T*.      <sup>9-9</sup> ne ordre *T*.      <sup>10-10</sup> *I.* *T*.      <sup>11</sup> *Add* : a *P*, *T*.      <sup>12-12</sup> prest *P*, *T*.      <sup>13-13</sup> remuable vt supra et nent perpetuel *P*. remuable a la volunte labbe auantdit prest etc. *T*.

**Note from the Record**—*continued*.

to the said church one Geoffrey of Holmleghe (?), a clerk of his, who on his presentation was admitted and instituted etc. in time of peace in the time of King Edward father of our Lord the present King, and by his death the said church is now vacant etc.

And the Archbishop comes by his attorney, and says that he claims nothing in the advowson of the said church save as the diocesan of the place etc.

Therefore let the said Abbot have a writ to the same Archbishop that, notwithstanding the said Archbishop's claim, he admit a proper parson to the said church on the presentation of the said Abbot etc.

Afterwards, since the said Archbishop died<sup>1</sup> before he had admitted a proper parson etc., the guardian of the spiritualities of the said Archbishop was directed that he admit etc.

Afterwards on the morrow of St. John the Baptist next following, our Lord the King sent his writ to his Justices here that they send the record in this matter before his Justices for the first assize in the county of Kent.<sup>2</sup>

And it is sent them by Thomas of Thornetone etc.

18. THE PRIOR OF LINTON *v.* THE BISHOP OF ELY.

## I.

## Assize of last presentation.

One Roland prior of Linton brought an assize of last presentation, for the vicarage of the church of Linton, and said that one Alan some time prior, his predecessor etc., had presented a clerk of his, William by name, in time of peace in the time of King Edward father of the present King, and (that) by (that clerk's) death the church is now vacant. And he prayed the assize.

*Toudeby.* At Linton there is no convent, collegiate,<sup>3</sup> profession, order, rule, or common seal. Nor is Roland a perpetual prior, but he is removable at the will of the abbot of St. Jacutus. Judgment whether he ought to be received to<sup>4</sup> this writ.

*Scrope.* There is, and there has been, a plea here in which he has pleaded as prior, and his predecessors, as priors, pleaded and presented to the said vicarage, and he is perpetual prior. Ready<sup>4</sup> etc.<sup>4</sup>

*Toudeby.* Not perpetual, but removable (as above). And if (he) be found perpetual, (then) we say that he has nothing in Linton save as parson of the church of Linton. (And he is) not called<sup>5</sup> parson. Judgment of the writ.

<sup>1</sup> Archbishop Robert Winchelsey died on the 11th May, 1313; his successor, Walter Reynolds, was translated from Worcester on the 1st October, 1313. See Stubbs, *Registrum Sacrum Anglicanum*.

<sup>2</sup> See also *Cal. Close* 1313-18, p. 194.

<sup>3</sup> *I.e.* collegiate church.

<sup>4</sup> Supplied from *P* and *T*.

<sup>5</sup> In the writ.



*Scrop.* Vous auez plede al assise par qei vous ne serez my receu ore de abatre nostre bref.

*Berr.* Ceo qil ad dit ore : est <sup>1</sup>de fere<sup>1</sup> vostre persone nent<sup>2</sup> responsable <sup>3</sup>et ceo<sup>3</sup> pursewant <sup>4</sup>a soun primer dit.<sup>4</sup>

*Scrop.* Nent<sup>5</sup> prior<sup>6</sup> etc. et<sup>7</sup> qil nad rens si noun cum persone et si troue seit Prior : nous sumes prest de oyer la reconissance <sup>2</sup>de lassise.<sup>2</sup>

*Et assisa remanet per defectum Iuratorum.*

Nota<sup>8</sup> per *Berr.* En<sup>2</sup> co(mmun)e<sup>9</sup> pleee.<sup>2</sup> qe la ou Abbe ou Prior tent eglise en propre vs et deit presenter a la vicarie de mesme la eglise<sup>10</sup> seit destourbe : il cum Abbe ou Prior portera soun bref sanz dire persone, mes si il demaunde tere ou tenement qe seit del droit de sa eglise, il<sup>11</sup> nomera persone pur ceo qil tent la personealte<sup>12</sup> en propre eus etc.

## II.<sup>13</sup>

Dreyn presentement.

Le Priour de Lantoin porta vn assise de drein presentement etc. et le defendant dit qe la Lantoin ny ad il Couent College profession ordre ne rule ne comun seal et cesti nest pas Priour perpetuele eynz remuable a la volente labbe de T. et si troue soit perpetuel il nyad rien si noun com persone deglise de Lyntone prest etc.

Et fust lassise porte dune viker(ie).

Et nota qe la ou homme de Religioun porte le dreyn presentement ou le *Quare Impedit* dune vikerie en cas ou il tient leglise en propres oeps il com Abbe ou priour portera son bref pur ceo qil tient lauoesoun etc. com Abbe ou Priour et sil demande terre com appurtenant a la Eglise il demandera com persone pur ceo qil tient leglise auxi com persone et ne mye com patroun etc.

### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 355 verso. Cambridgeshire.  
Written by Luding'.

Assisa venit recognitura quis aduocatus tempore pacis presentauit vltimam personam que mortua est ad vicariam ecclesie de Lynton(e) que

<sup>1-1</sup> a defaire T. <sup>2</sup> Om. T. <sup>3-3</sup> et ceo est P. etc. T. <sup>4-4</sup> de soun bref T.  
<sup>5</sup> Interlined in C. Instead of this word there is *primer dit* in P, T.  
<sup>6</sup> Add: prest T. <sup>7</sup> Toud. (this is a beginning of a new statement) P, T.  
<sup>8</sup> In C this stands as a separate report. In P and T it is the continuation of the same case. <sup>9</sup> ceo P. Om. T. <sup>10</sup> Add: sil P, T. <sup>11</sup> Add: se P, T. <sup>12</sup> parsonage aute P. parsonage T. <sup>13</sup> From Z. This version, though it repeats to a large extent the words of version (I), seems worth notice as showing the way in which the reports in Z (at least those for our term) were compiled.

*Scrope.* You have pleaded to the assize. Therefore you will not be received now to abate our writ.

BEREFORD C.J. That which he has said now is to make your person not answerable,<sup>1</sup> and this is<sup>2</sup> pursuant to his former statement.

*Scrope.* Not prior etc.

*Toudeby.*<sup>3</sup> That he has nothing save as parson. And if (it) be found (that he is) prior, we are ready to hear the finding of the assize.

And the assize remains (not taken) by default of the jurors.

Note by BEREFORD C.J. in this<sup>4</sup> plea, that where an abbot or a prior holds a church to his own uses, and ought to present to the vicarage of that church, if<sup>5</sup> he be disturbed; he will bring his writ as abbot or prior, without saying 'parson.' But if he demand land or (a) tenement which be of the right of his church, he will call himself<sup>3</sup> parson because he holds the parsonage to his own uses etc.

## II.

### Last presentation.

The prior of Linton brought an assize of last presentation etc. and the defendant said that at Linton there is no convent, collegiate, profession, order, rule or common seal and this one is not a perpetual prior but (is) removable at the will of the abbot of St. Jacutus. And if (he) be found perpetual, he has nothing save as parson of the church of Linton. Ready etc.

And the assize had been brought for a vicarage.

And note that where a religious<sup>5</sup> brings the (assize of) last presentation or the *quare impedit* for a vicarage, in the case when he holds the church to his own uses, he will bring his writ as abbot or prior, because he holds the advowson etc. as abbot or prior. And if he demand land as appurtenant to the church, he will demand as parson, because he holds the church as parson and not as patron etc.

### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 355 verso. Cambridgeshire.  
Written by Luding'.

An assize comes to find what patron in time of peace presented the last parson, who is dead, to the vicarage of the church of Linton, which is vacant,

<sup>1</sup> *I.e.* one who need not be answered.

<sup>4</sup> Supplied from *P*.

<sup>2</sup> Supplied from *P*.

<sup>5</sup> N.E.D. viii. 411 col. 2 *s.v.* 'Religious'

<sup>3</sup> Supplied from *P* and *T*.

B. 2.



## Note from the Record—continued.

vacat, Et cuius aduocacionem Rolandus Prior de Lynton(e) clam(at) versus Iohannem Episcopum Elyensem etc. Et vnde idem Prior per attornatum suum dicit quod quidam Alanus quondam Prior de Lynton(e) predecessor etc. ad eandem vicariam presentauit quendam Willelmum Hardel clericum suum qui ad presentationem suam fuit admissus et institutus tempore pacis tempore Edwardi Regis patris domini Regis nunc, per cuius mortem predicta vicaria modo vacat etc.

Et Episcopus per attornatum suum venit Et dicit quod non debet ei inde ad hoc breue respondere, Dicit enim quod predictus Rolandus non est Prior Immo commonachus Abbatis sancti Iacuti persone ecclesie de Lynton(e), ibidem per ipsum Abbatem deputatus et ponendus et amouendus ad voluntatem ipsius Abbatis etc. Et si compertum sit quod idem Rolandus sit Prior etc. nichil dicit quare assisa remaneat etc, set paratus est audire recognicionem eiusdem assise etc.

Ideo capiatur assisa set ponitur in respectum vsque in octabis sancti Hillarii per defectum recognitorum quia nullus venit.

Ideo vicecomes habeat corpora eorum hic ad prefatum terminum etc.

19. THE PARSON OF MEPPERSHALL v. THE PRIOR OF CHICKSANDS.<sup>1</sup>I.<sup>2</sup>

<sup>3</sup>. . . . ou le tenant ne fut mye receu a dedire la seisine son predecessour sanz respondre si la tere ne fut la franche aumoigne ou noun etc.<sup>3</sup>

Vne persone porta son bref de *vtrum* vers vn Abbe et pria qe retorn<sup>4</sup> fut par la iurre le quel vn ac(r)a de de<sup>5</sup> terre ouesque<sup>6</sup> les appurtenances furent<sup>7</sup> franche aumoigne de sa eglise de N. ou lay fee le abbe et dist qe I. son predecessour fut seisi de cele<sup>8</sup> tere et aliena etc.

*Russel.*<sup>9</sup> Cel acre de tere est nostre<sup>5</sup> franc Augmoigne e nient lay feo et ceo voloms auerer par la iurre et demandoms iugement du bref E ci<sup>10</sup> troue seit qe nient nostre fraunche aumoigne donq(e) dioms nous. qe soun predecessour ne fut vnqe seisi. prest etc.

*Scrop.* A dire qe moun predecessour ne fut vnqe seisi nauendra<sup>11</sup> pas. par la reson qe cest vn bref dedroit. ou la per(sone)<sup>12</sup> poet auxi haurier le droit de sa eglice. com par nul autre bref qe seit dounc a dire qil ne fust vnque. . .<sup>13</sup> test<sup>14</sup> tut en la possessioun et rienz ne touche a moun bref <sup>15</sup>qest en le droit. einz couent qe vous di(siez) si vous volez respondre amoun bref et<sup>15</sup> nient la fraunche almoigne qar il poet

<sup>1</sup> Reported by *E, M, P.* and *R.*    <sup>2</sup> From *P.* Compared with *R.*    <sup>3-3</sup> Breue de *vtrum* *R.*    <sup>4</sup> reconust *R.*    <sup>5</sup> *Om.* *R.*    <sup>6</sup> eu *R.*    <sup>7</sup> fut *R.*    <sup>8</sup> *Add:* acre de *R.*    <sup>9</sup> *Rossel.* *R.*    <sup>10</sup> si *R.*    <sup>11</sup> *Add:* il *R.*    <sup>12</sup> partie *R.*  
<sup>13</sup> erasure *P.* seisi *R.*    <sup>14</sup> ceo est *R.*    <sup>15-15</sup> *Om.* *R.*

**Note from the Record**—*continued*.

and of which Roland, Prior of Linton,<sup>1</sup> claims the advowson against John, Bishop of Ely<sup>2</sup> etc. And concerning which the said Prior says by his attorney that one Alan, sometime Prior of Linton, predecessor etc., presented to the said church one William Hardel, a clerk of his, who on his presentation was admitted and instituted in time of peace in the time of King Edward father of our Lord the present King, by whose death the said vicarage is now vacant etc.

And the Bishop comes by his attorney. And he says that he ought not in this matter to answer him upon this writ. For he says that the said Roland is not Prior, but a fellow-monk (*commonachus*) of the Abbot of St. Jacutus,<sup>3</sup> the parson of the church of Linton, deputed there by the said Abbot, to be put (there) and removed at the will of the said Abbot etc. And if it be found that the said Roland is Prior etc., he says nothing why the assize should remain etc., but he is ready to hear the recognition of the said assize etc.

Therefore let the assize be taken, but it is put in respite until the octaves of St. Hilary for default of recognitors because none has come.

Therefore let the Sheriff have their bodies here at the said term etc.

## 19. THE PARSON OF MEPPERSHALL *v.* THE PRIOR OF CHICKSANDS.

### I.

. . . where the tenant was not received to deny his predecessor's seisin without answering whether the land was free alms or no etc.

A parson brought his writ of *utrum* against an abbot and prayed that it be returned by the jury whether one acre of land with the appurtenances were the free alms of his church of Meppershall or lay fee of the abbot. And he said that Henry his predecessor had been seised of that land and had alienated etc.

*Russell.* That acre of land is our free alms and not lay fee, and this we are willing to aver by the jury, and we demand judgment of the writ. And if it be found that it is not our free alms, then we say that his predecessor was never seised. Ready etc.

*Scrope.* He cannot get to saying that my predecessor was never seised, (and this) by the reason that this is a writ of right, in which the parson can try the right of his church as highly as by any other writ that there is. Therefore to say that he was never seised<sup>4</sup> that relates<sup>1</sup> entirely to the possession and does not at all touch my writ which relates to the right. But if you want to answer to my writ

<sup>1</sup> See Dugdale, *Mon.* vi, p. 1045. 1310-16 (Stubbs, *Reg. Sacrum Anglicanum*).  
Roland is the first prior mentioned by Dugdale, but his dates are not given.

<sup>2</sup> John Ketton, Bishop of Ely

<sup>3</sup> St. Jacutus de Insula. Brittany.

<sup>4</sup> Supplied from *R.*



estre ensemble. qe moun predecessour ne fut vnqe seisi et vnqore qe ceo seit la fraunche almoigne par qei il vous<sup>1</sup> couient a moun bref respondre etc.

*Berr. ad idem.* Si troue seit par la Iurre qe cele tere est de<sup>1</sup> lay fee le Abbe issint qe le bref seit agarde bon et qe son predecessour ne fut vnqe seisi. auxi com vous dites perdreit il ataunt<sup>2</sup> le bref<sup>3</sup> de<sup>4</sup> eglise certes noun freit et il ne p(eu)t<sup>5</sup> par autre bref pleidere le dreit de s(on)<sup>6</sup> Eglise en ceo cas si par cesti bref de dreit noun par quei responez outre si coe seit la fraunche almoigne ou noun.

*Russel.* Nient la<sup>7</sup> fraunche almoigne de<sup>4</sup> Eglise ne soun predecessour vnqes seisi<sup>8</sup> prest etc.

Et alii econtra.

Ideo<sup>1</sup> etc.<sup>1</sup>

## II.<sup>9</sup>

Iur(ata) de vtrum.

Vn persone porta la Iure de vtrum vers vn Abbe a r(econnaitre) si certain tenemens furent fraunc aumoigne de sa Eglise etc. ou lay fee labbe.

*Russel.* Labbe vous dit la ou il prie qe reconu soit etc. par la Iure vous dit qe ceo est le fraunc aumoigne de sa Eglise iugement du bref et si troue soit qe nient fraunc aumoigne il vous dit qe le predecessour la persone ne feut vnqes seisi etc.

*Scrop.* A ceo r(esponse) ne deuez estre receu a dedire seisine vostre predecessour qe ceo est nostre bref de droit et autre bref ne poms auoir etc.

*Berr.* Si nous trouoms qe le bref soit bon nous enquerroms solom la nature du bref.

Et ideo etc. xii.

## III.<sup>10</sup>

De vtrum.

Vn prior porta la iure de vtrum vers vn Abbe et pria qe reconue fu par la iuree si certeynz tenemenz furent franche almoigne de sa Eglise. de B. ou ley fee Labbe.

*Russel.* Cest fraunche almoigne de sa Eglise de A en quel cas il. ad altre bref iugement de cesti bref et si troue seit qe ley fee vous dioms qe la ou il ad counte qe son predecessour fu. seisi. vous dioms qil ne fu. vnkes seisi prest dauerer par la iure.

<sup>1</sup> *Om. R.*      <sup>2</sup> *par taunt R.*      <sup>3</sup> *dreit R.*      <sup>4</sup> *Add: sa R.*      <sup>5</sup> *peut R.*  
<sup>6</sup> *sa R.*      <sup>7</sup> *de R.*      <sup>8</sup> *Add: del acre de trere R.*      <sup>9</sup> *From M.*      <sup>10</sup> *From E.*

you must say 'not free alms,' for it may be (true) at the same time that my ancestor was never seised and yet that this is a free alms. Therefore you must answer to my writ.

BEREFORD C.J. (to the same effect). If it be found by the jury that that land is of the lay fee of the abbot, so that the writ be awarded good, and that his predecessor was never seised (as you say), would he thereby lose the right<sup>1</sup> of his church? He certainly would not. And he cannot plead the right of his church in this case by any other writ, if not by this writ of right. Therefore answer over whether that be the free alms or no.

*Russell.* Not the free alms of the church, nor (was) his predecessor ever seised. Ready etc.

Issue joined.

Therefore etc.

## II.

*Jury utrum.*

A parson brought a jury *utrum* against an abbot, to find whether certain tenements were the free alms of his church etc. or lay fee of the abbot.

*Russell.* Whereas he prays that it be found etc. by the jury, the abbot tells you that this is the free alms of his (the abbot's) church. Judgment of the writ. And if it be found that it is not free alms, he tells you that the parson's predecessor was never seised etc.

*Scrope.* To that answer (namely, to deny the seisin of your predecessor), you ought not to be received, because this is our writ of right, and we cannot have any other writ etc.

BEREFORD C.J. If we find that the writ is good we shall inquire according to the nature of the writ.

And therefore etc. twelve.

## III.

*Utrum.*

A prior brought the jury *utrum* against an abbot and prayed that it be found by the jury whether certain tenements were the free alms of his church of Meppershall or the lay fee of the abbot.

*Russell.* This is the free alms of his church of St. Mary of Chick-sands and in such a case he has a different writ. Judgment of this writ. And if it be found that (it is) lay fee, we tell you that whereas he has counted that his predecessor was seised, (we tell you) that he was never seised. Ready to aver by the jury.

<sup>1</sup> Supplied from *R.*



*Scrop.* A tel auerement ne deuetz auenir qe cest nostre bref de droit ou nous ne poms altre bref auoir et tot fut il qe nostre predecessour ne fu vnkes seisi. et troue fu. qe cel. fu fraunche almoigne de nostre Esglise. vnkor de dreit nous recoueroms. par. qey auerement qe determine soulement sur cel. poynt. la. Court ne reseuera pas et demandoms iugement.

*Tou.* Si troue seit qe cest fraunche almoigne Labbe le bref se abatera et si ley fee la iuree passera en sa nature.

*Scrop.* A cel nous vous chasoms. et pur ceo prioms qe ensi soit.

*Et sic fuit.*

#### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 181 recto. Bedfordshire.

Written by Burnedishe.

Iurata venit recognitura vtrum vna acra terre cum pertinenciis in Meperteshale sit libera elemosina pertinens ad ecclesiam de Mepertshale vnde Magister Rogerus de Crophulle est persona an laicum feodum Prioris de Chiksand Et vnde Idem Magister dicit quod quidam Henricus quondam persona ecclesie predictae predecessor etc. fuit seiscitus de predicta acra vt de Iure ecclesie sue predictae tempore pacis tempore domini Edwardi Regis patris domini Regis nunc Capiendo inde ad valenciam etc. Et illam eodem tempore alienauit etc.

Et Prior per Willelmum de Horblyng attornatum suum venit Et dicit quod non debet ei inde ad hoc breue respondere, quia dicit quod<sup>1</sup> ipse tenet<sup>1</sup> predictam acram terre est<sup>2</sup> tanquam<sup>1</sup> liberam elemosinam pertinentem ad ecclesiam ipsius Prioris beate Marie de Chiksand Et hoc paratus est verificare per Iuratam in quo casu competeret ei aliud breue Iurate vtrum in suo casu formatum etc. Et si conuincatur per Iuratam quod non sit libera elemosina pertinens ad ecclesiam ipsius Prioris beate Marie de Chiksand nichil dicit vlterius quare Iurata remaneat set paratus est audire recognicionem Iurate etc.

Ideo capiat Iurata set ponitur in respectum vsque a die sancti Hillarii in xv. dies per defectum recognitorum quia nullus venit.

Ideo vicecomes habeat corpora etc.

<sup>1</sup> Interlined.    <sup>2</sup> This should have been cancelled since the interlined words have changed the construction of the sentence.

*Scrope.* You ought not to get to such an averment, for this is our writ of right, and we cannot have a different writ. And albeit that our predecessor was never seised, (if) it be found that it was the free alms of our church, yet we shall of right recover. Therefore the court will not receive an averment which determines only this point. And we demand judgment.

*Toudeby.* If it be found that this is the abbot's free alms, the writ will be abated, and if (it be found that it is) lay fee, the jury will find (according to) its nature.

*Scrope.* To that we drive you, and therefore we pray that it be so. And so it was.

### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 181 recto. Bedfordshire.  
Written by Burnedisshē.

A jury comes to find whether one acre of land with the appurtenances in Meppershall is free alms belonging to the church of Meppershall whereof Master Roger of Crophulle<sup>1</sup> is parson, or the lay fee of the Prior of Chicksands.<sup>2</sup> And concerning this matter the said Master says that one Henry sometime parson of the said church predecessor etc. was seised of the said acre as in the right of his said church in time of peace in the time of Lord Edward the King, father of our Lord the present King, taking thereof to the value etc. And at that time he alienated it etc.

And the Prior comes by William of Horblyng, his attorney, and says that he ought not in this matter to answer him to this writ, for he says that he holds the said acre of land as free alms belonging to the said Prior's church of St. Mary of Chicksands, and this he is ready to aver by the jury, and in such a case he (the plaintiff) should properly use another writ of a jury *utrum* formed upon his case etc. And if it were proved by the jury that it is not free alms belonging to the said Prior's church of St. Mary of Chicksands, he says nothing more why the jury should remain, but he is ready to hear the recognition of the jury etc.

Therefore let the jury be taken, but it is put in respite until the quindene of St. Hilary for default of recognitors because none has come.

Therefore let the Sheriff have the bodies etc.

<sup>1</sup> Roger of Crophulle went beyond the sea on the King's service with the bishop-elect of Dublin in 1307 (*Cal. Pat.* 1307-13, pp. 32, 222). In 1311 he was collated to the prebend of Sharesill in Penkrige (*ibid.* p. 351). He had lands in Nottinghamshire, and was perhaps a kinsman of the sheriff, Ralph of Crophulle (*Cal. Close* 1323-7,

p. 517; *Cal. Pat.* 1307-13, p. 381).

<sup>2</sup> Chicksands Priory was heavily in debt at this period (*V.C.H. Beds.* i, 391). In August 1325 the Prior and Convent demised the manor called Meppershall chapel to John Puisequila, a Genoese merchant, for life (*Cal. Close* 1323-7, p. 293).



20. THE KING v. THE PRIOR OF ST. JAMES AND WALDA.<sup>1</sup>I.<sup>2</sup>

*Quare impedit* ou le rei demaunda la voweson pur ceo qe Abbe auoyt apropre vn eglise saunz conge le rei.

Nostre seigneur le Rei porta soun *quare impedit* uers labbe de seint Iage hors de Norh(a)m (*sic*) del eglise de Scroptone e dit qe aly apent a presenter par la reson qe vn Simond le fiz Simond de monagu(e) fut seisi de la voweson de la eglise auandite en tens de pes en temps le Rei Edward pere etc. qe a meme ceux temps present(a) .I. soun clerk Giles le Rouz qe a son present(ement) etc. par qi mort la eglise est ore voide le qel Simond dona meme la voweson a Simond de Keilmerche Abbe etc. predec(essour) etc. le qel apropria la dite Eglise etc. saunz gre le Rey etc. a ten(ir) en propres vs a luy e a ces succ(essours) a touz iors par qel apropiacion acrust a nostre seigneur le Rey E. pere etc. dreit a presenter dount desc(endist) de E. le dreit de presenter etc. E qe ore est qe dieux gard com a fiz e heir e issint apent a nostre seigneur le rei a presenter etc. dont meme cesti Abbe etc. luy desturbe a tort e a ces damages de ccc. livres. Et si labbe le voile dedire etc. pret del auerer pur le Rei etc.

*Denum.* Vous deites pur nostre seigneur le Rei qe s. le fiz s. de M. fut seisi de la voweson etc. e presenta vn Giles etc. par qi mort la Eglise est ore voide. en supp(osant) qe la eglise est ore voide et p(u)s qe s. nostre predecessur apropria la dite eglise a tenir en propres eous pur ly et pur ces suc(cessours) a touz iors et issint la supp(osez) estre pleine qe sont ij. contraries e nentendom pas qe nostre seigneur le Rei voile ou deiue a cele demostrance qi est contrarie en ly meme estre r(eceu).

*Scrop.* Donqe alegget vous plein(er)te uers le Rei.

<sup>1</sup> Reported by *E, M, P, R, T,* and *X.*

<sup>2</sup> From *R.*

20. THE KING *v.* THE PRIOR OF ST. JAMES AND WALDA.

## I.

*Quare impedit*, where the King demanded the advowson because the abbot had appropriated a church without leave from the king.

Our Lord the King brought his *quare impedit* against the abbot of St. James outside Northampton,<sup>1</sup> for the church of Spratton, and said that to him it belonged to present, by the reason that one Simon the son of Simon of Montague was seised of the advowson of the said church in time of peace, in the time of King Edward father etc., and did present at that time a clerk of his, Giles le Rous, who on his presentation etc. and by whose death the church is now vacant. And the said Simon gave the said advowson to Simon of Keylmersh, abbot etc.,<sup>2</sup> predecessor etc., who appropriated<sup>3</sup> the said church etc., without permission from the King etc., to hold to him and to his successors, to their own uses for ever. By that appropriation there accrued to our Lord the King Edward father etc., the right to present, and there descended from Edward the right to present etc. (to) Edward the present (King), whom may God save, as to his son and heir. And thus it belongs to our Lord the King to present etc. And thereof the said abbot etc. wrongfully disturbs him, to his damage of £300. And if the abbot should wish to deny it, ready to aver it on behalf of the King etc.

*Denom.* You say for our Lord the King that Simon the son of Simon of Montague was seised of the advowson etc., and presented one Giles etc., by whose death the church is now vacant, (thereby) supposing that the church is now vacant. And afterwards (you say) that Simon our predecessor appropriated the said church to hold to him and to his successors to their own uses, for ever, and thus you suppose (that the church is) filled. And these are two contrary (statements), and we do not think that our Lord the King will wish, or ought, to be received to this demonstrance which is inconsistent in itself.

*Scope.* Then you allege plenerty against the King?

<sup>1</sup> The Abbot of St. James by Northampton was summoned to Parliament 1265-1319; his proctor in the last year was instructed to ask for the revocation of the privilege (*V.C.H. Northants*, ii, 128). The Bishop of Ely was staying at this Abbey in 1318, when the Great Seal was delivered to him (*ibid.*).

<sup>2</sup> There is no Simon de Keylmarsh mentioned in Dugdale (*Mon.* vi, p. 115), but Adam de Keylmarsh is said to have been Abbot from 1269-74 (*ibid.*;

*V.C.H. Northants*, ii, 128). The name is, however, given as Simon in the Record as well as in the Year Books.

<sup>3</sup> On appropriation in general see e.g. Phillimore, *Ecclesiastical Law of the Church of England*, 2nd ed., i, 218-222; Cripps, *Law relating to the Church and the Clergy*, 6th ed., pp. 136-138; Saegmueller, *Lehrbuch des Katholischen Kirchenrechts*, 2nd ed., i, 159; Hinschius, *Zur Geschichte der Inkorporation und des Patronatrechtes* (in: *Festgaben für Heffter*, 1873), 1 ff.



*Herle.* Nanyl ieo plede ala forme de vostre demostrance qe est en ly meme reppoinaunt etc.

*Toud.* La cause de nostre accion si est lapropriacion saunz la volunte nostre seignur le Rey fete a la quele vous pledet et par taunt al accion, par qei volet ceo pur r(espounse).

*Herle.* Nous le voloms a la demostrance le Rei qar nous entendoms qil veut estre mene par dreit et par r(eson) en sa c(ou)rt demesne com autr(es) ser(o)nt e si vous agardez la demustrance bon(e) en cel p(art) nous diroms autre chose etc.

*Toud.* Lapropriacion qe nous supp(osoms) la eglise estre pleine nest point qant au Rey qar home ne purra uers ly nule plen(er)te aliger. qar nul temps c(ou)rt uers le Rei etc.

*Ing.* Il ne pledent pas a cel qe vous pledez qar il pledent a vostre demustrance par paroles mes le effect(e) si est al accion e sur le effect(e) deit home iuger etc. qar le comensement de lur excepcion si sauore la nature de vn excepcion dilatorie en tant com vous chalenget la forme de lur demustrance mes le effect(e) de lur excepcion si sauore vn excepcion peremptorie en tant com vous deites qele est pleine par reson del apropiacion la quele donne action a nostre seignur le Rei e issint vostre excepcion trenche al action etc.

*Herle.* Si ieo eye excepcion a la demustrance qe sei estent al action vncore la puse vser alu(n) al autre qar la ou home ioynt sa actioun e sa demustrance en semble la quele demustrance est contrariant en ly meme, e ieo challenge la forme de cele etc. par tant ne plede ieo mye directe al action et coment qe vous preynet vostre excepcion. nous prioms qe la court le recorde qe nous la vsoms a la demustrance et ne mie etc.

*Denum.* Sauue nous seit nostre primer excepcion etc. et nentendomme qe nostre seignur le Rey veut ou deiue a cel demustrance estre r(espondu). par la reson qe la cause et la fundement de sa actioun a ceo qil dit si est la propriacioun saunz gre etc. la quele apropiacioun si est de p(er)sonage qest chose espiritiale dont par reson de cele cause qest esp(iritiale) si bietz vous acter(er) dreit depresenter qest lay chose et issint vostre demustrance repoygne en ly. meme. iugement si etc.

*Malm.* Vncore vostre excepcion si trenche al actioun et d(eman)-d(oms) si vous volet ceo pur resp(onse).

*Herle.* No. I plead to the form of your demonstrance which is repugnant in itself, etc.

*Toudeby.* The cause of our action is the appropriation done without the will of our Lord the King, and you plead to it, and in so far (you plead) to the action. Therefore, do you want (to give this) as an answer ?

*Herle.* We want this (to go) as to the demonstrance of the King, because we understand that he wants to be guided, in his own Court, by right and by reason, as the others will. And if you award the demonstrance good in this respect, we shall say something else etc.

*Toudeby.* (By) the appropriation (by) which we suppose that the church is filled it is not filled so far as the King is concerned, for one can allege no plenerty against him, since no time runs against the King etc.

*Inge.* They do not plead to that which you plead, for they plead, so far as their words go, to your demonstrance, but in effect it is to the action. And one ought to judge by the effect etc. For the beginning of their exception savours of the nature of a dilatory exception, in so far as you challenge the form of their demonstrance. But the effect of their exception savours of a peremptory exception, in so far as you say that (the church) is filled by reason of the appropriation which gives an action to our lord the King. And thus your exception aims at the action etc.

*Herle.* If I have an exception to the demonstrance, which (exception) extends to the action, I can still use it against the one and against the other. For where one combines one's action and one's demonstrance, and the demonstrance is contradictory in itself, and I challenge its form etc., thereby I do not plead directly to the action. And however you (may) take your<sup>1</sup> exception, we pray that the Court record it that we use it against the demonstrance and not etc.

*Denom.* Let there be saved to us our first exception etc., and we do not think that our Lord the King will wish, or ought, to be answered to that demonstrance, by the reason that the cause and the foundation of his action (according to what he says) is the appropriation without consent etc., and that appropriation is one of the parsonage and that is a spiritual matter. Now, by reason of that matter which is a spiritual one, you want to attract the right of presenting which is a lay matter. And thus your demonstrance is repugnant in itself. Judgment whether etc.

*Malberthorpe.* Still your exception aims at the action, and we demand whether you want (to give) this as answer.

<sup>1</sup> Or, *our* ?



*Herle.* Vous supposet par my vostre demustrance qe vous pusset par cause espec(iale)<sup>1</sup> qest apropiacioun depresenter recouerer lay patronage et issint vostre demostrance nent pursuaunt en ly meme. et de ceo d(eman)d(oms) iugement etc.

*Ber.* Si terre ou tenemenz seient apropiiez ou par alienacioun deuenuz en morte main sauns lassent et la volunte le Rei il poent entrer et tenir les tenemenz en noun de destr(esce) par neglig(eance) des autres seignurag(es) si la qil seient derenz hors de sa meyne etc. com tenemenz forpez par reson del apropiacion auxi en ceo cas tot seit ceo qil ne peut pas entrer pur ceo qe la voweson et le present(ement) sunt choses incorporels et nent mainabl(es) actioun acrust a luy de presenter et dr(eit) depresent(ement) par la reson del apropiacion en leu dedestr(esce). Et dautre part. vostre excepcion si est vne peremptorie et refert tot al actioun et issint entent la court.

*Denum.* Sire vncore nentendom mie qe nostre seignur le Rei voile etc. a cele demostrance estre r(espondu) par la reson qe la ou il dit qe labbe ad<sup>2</sup> aproprie etc. la quele ly donne actioun etc. la nad il pas dit en sa demustrance etc. qe la voweson fut tenuz de ly en chef. nele abeye neleplus ne qe en tens deuacacion la eglise fut apropiiez qe donreit action aly com pur le temps vacacion par reson de dr(eit) forfet par neglig(eance) de autres seignur dr(eit) depresenter ly acrust iugement. si a sa demustrance qest insuffic(ien)t etc.

ne<sup>3</sup> bous(et) pas plus dire en demostr(ance) qe nous donne action et cel apropiacioun est cause de nostre action dela quele apropiacioun nous auoms fet mencion en nostre counte etc. a qei vous ne r(esponez) nent iugement etc.

*Denum.* Nous vous dioms qe la voweson de meme cel eglise net pas tenu de nostre seignur le Rey en chief ne ele nest pas de son fee. mes est del fee vne Hawyse de Kenez et le Abbe de saint Iake present(ea?) mesme ceste abbe sicum dr(eit) meme cele auoweson etc. de Robert de Kenes et de ces auncestres qi estat lauand(ite) Hauyse ad le quel Robert et ces auncestres tindrent meme la voweson del honur de leyc(estre) pret etc. et qe les abbes de saint Iacob predecessurs meme cesti etc. meme la eglise en temps le Rey H. ael nostre seignur le Rei etc. tindrent aproprie pret etc. et d(emaun)d(oms) iugement si le Rei voile ou deiue a tele demustr(aunce) estre r(espondu) par la quele il suppose la eglise estre aproprie en (temps) le Rei E. pere etc.

*Malm.* Sire nous vous dioms qe le abb(ei)e de saint Iake si est<sup>4</sup> del nostre seignur le Rei et de ly est tenuz en ch(i)ef dont si meme le abb(eie)

<sup>1</sup> This should probably read *espiritule*.    <sup>2</sup> Added above the line.    <sup>3</sup> It seems that the end of Denham's speech and the beginning of the reply of the King's attorney are here omitted: Part of the latter's reply seems to begin here.    <sup>4</sup> *Suppl. tenue*.

*Herle.* You suppose by your demonstrance that you can, by a spiritual matter (as is the appropriation of the presentation) recover the lay patronage. And thus your demonstrance is not pursuant in itself. And as to this we demand judgment etc.

*BEREFORD C.J.* If land, or tenements, be appropriated, or by alienation come into mortmain, without the King's consent and will, he can enter and hold the tenements, in the name of distress, by negligence of the other lords, save if they be out of his hand etc. As it is of tenements forfeited by reason of appropriation, so (it is) in this case: albeit that he cannot enter because the advowson and the presentation are things incorporeal and not tangible, (yet) an action accrued to him for the presentation, and the right of presentation, by reason of the appropriation, (and) in lieu of distress. And on the other hand your exception is a peremptory one and refers entirely to the action. And this is the opinion of the Court.

*Denom.* Sir, still we do not think that our Lord the King will wish etc. to be answered to this demonstrance, by the reason that whereas he has said that the abbot appropriated etc. (which gives him his action, etc.), he did not say in his demonstrance etc. that the advowson was held of him in chief, nor the abbey any more, nor that in the time of vacancy the church was appropriated (that would give him an action as to the time of vacancy, as by reason of a right forfeited through the negligence of the other lord(s) the right to present would accrue to him). Judgment whether to his demonstrance which is insufficient etc.

. . . . you do not want to say more as to the demonstrance which gives us an action, and that appropriation is the cause of our action. And we made a mention of that appropriation in our count etc. And to that you do not answer. Judgment etc.

*Denom.* We tell you that the advowson of the said church is not held of our Lord the King in chief, nor is it of his fee, but it is of the fee of one Avise of Kenes. And the abbot of St. James presented the same abbot as (in the) right of the same advowson etc. of Robert of Kenes and of his ancestors whose estate the said Hawes has, and that Robert and his ancestors held the said advowson of the honour of Leicester. Ready etc., and that the abbots of St. James, predecessors of this same etc., in the time of King Henry grandfather of our Lord the King etc., held the said church appropriated. Ready etc., and we demand judgment whether the King will wish, or ought, to be answered to such a demonstrance by which he supposes that the church was appropriated in the time of King Edward the father etc.

*Malberthorpe.* Sir, we tell you that the abbey of St. James is held of our Lord the King and of him is held in chief. Hence if the abbey



voidast degele fee qe la eglise fut le Rei present(ereit) com pur temps vac(aci)on et del houre qil ount conu qil vnt meme la eglise aproprie saunz etc. par qel apropiacioun nostre seignur le Rei perdreit benefice de presenter en temps vac(aci)on si la Eglise voidast iugement pur le Rey et prioms bref al Euesqe etc.

II.<sup>1</sup>

*Quare impedit pro Rege* <sup>2</sup>racione appropriacionis uersus Abbatem.<sup>2</sup>

Ceo vous moustre nostre seignur le Roi par W.<sup>3</sup> de<sup>4</sup> Langelethe<sup>5</sup> qe cy est qe sewyst pur le<sup>6</sup> Roi<sup>7</sup> qe labbe de seynt Iake <sup>8</sup>hors de<sup>8</sup> Northampton<sup>9</sup> atort <sup>10</sup>ne luy soefre<sup>10</sup> presenter couenable persone al Eglise de Toropton<sup>11</sup> etc. qe<sup>12</sup> a sa Doneson<sup>13</sup> apent. et pur ceo atort qe a luy apent apresenter par la reson qe vn Simond de Montagu<sup>14</sup> fut seisi del auoweson del eglise auantdite et presenta<sup>15</sup> vn son Clerk<sup>16</sup> qi a son presentement fut <sup>2</sup>r(ece)u<sup>2</sup> etc. en temps etc. <sup>17</sup>le Roi E. patris Regis nunc<sup>17</sup> par qi mort la Eglise <sup>18</sup>est ore voide<sup>18</sup> le quel Simond de M. del auoweson del Eglise auantdite enfeffa vn K.<sup>19</sup> iadis Abbe de seynt Iake auantdit<sup>3</sup> predecessour<sup>4</sup> etc. a luy et a sa Eglise de seynt Iake<sup>20</sup> auantdit<sup>21</sup> et a ses successours a touz iours le quel G. predecessour apropria<sup>22</sup> mesme la<sup>23</sup> Eglise aten(ir)<sup>24</sup> a luy et a mesme<sup>25</sup> la<sup>26</sup> Eglise de<sup>27</sup> etc. et a ces successours<sup>24</sup> en propres vses<sup>28</sup> totz iours saunz assent et la volente le dit Roi E.<sup>29</sup> pere le Roi qore est. par la <sup>30</sup>reson de<sup>30</sup> quel aproprement<sup>31</sup> accion est acru a <sup>32</sup>nostre seignur le Roi<sup>32</sup>. a<sup>33</sup> presenter a mesme cele eglise. dount <sup>34</sup>del Roi<sup>34</sup> E. pere etc. desc(endist) le droit del<sup>35</sup> presentement a<sup>36</sup> nostre seignur le Roi qore est<sup>35</sup> com a fiz et heir. issi<sup>37</sup> apent etc. et dount<sup>38</sup> lauandit Abbe et W. luy destourbent atort etc. et si etc. prest etc. pur<sup>39</sup> le Roi.

*Herle.*<sup>40</sup> Nous<sup>41</sup> nentendoms mye qe le Roi<sup>42</sup> voet ne<sup>43</sup> doit a tiel<sup>44</sup> demoustraunce estre r(ece)u qil<sup>45</sup> vnt dit qe la Eglise est voide et puis vnt il dist qe labbe lad <sup>46</sup>aproprie<sup>46</sup> aten(ir) en propre vs<sup>47</sup> en supposaunt

<sup>1</sup> From P. Compared with M, T. No headnote in T. <sup>2-2</sup> Om. M.  
<sup>3</sup> Willm. M. Will. T. <sup>4</sup> Om. T. <sup>5</sup> Langhleygh M. Langeley T. <sup>6</sup> Om. M, T.  
<sup>7</sup> ly M. luy T. <sup>8-8</sup> dehors M, T. <sup>9</sup> Om. T. Add: et W. de C: M, T.  
<sup>10-10</sup> etc. T. <sup>11</sup> stopten M: C: T. <sup>12</sup> qi etc. T. <sup>13</sup> Denison M.  
<sup>14</sup> Mountaigu M. M. T. <sup>15</sup> Add: a la Eglise M. <sup>16</sup> Add: E par noun M.  
Add: etc. T. <sup>17-17</sup> Om. M. Om. le Roi E. T. <sup>18-18</sup> se void(a) T. <sup>19</sup> G. de L.  
M: E. de B. T. <sup>20</sup> etc. T. <sup>21</sup> Om. M, T. <sup>22</sup> add: a ly et ses successours  
M. <sup>23</sup> cel T. <sup>24-24</sup> de saint Iake M. <sup>25</sup> sa T. <sup>26</sup> Om. T. <sup>27</sup> Add: saint  
Iake T. <sup>28</sup> eops a M. oeps a T. <sup>29</sup> le dit Ric. et T. <sup>30-30</sup> Om. M, T.  
<sup>31</sup> apropiacion M, T. <sup>32-32</sup> mesme cesti E pierre etc. T. <sup>33</sup> E. pere etc a M.  
<sup>34-34</sup> de M. <sup>35-35</sup> etc. a E: M. <sup>36</sup> Add: mesme cesti E. T. <sup>37</sup> et issint  
M, T. <sup>38</sup> lesditz M. <sup>39</sup> Add: nostre seignur M, T. <sup>40</sup> Hill. M. <sup>41</sup> Om. T.  
<sup>42</sup> nene M. <sup>43</sup> ne ne M. <sup>44</sup> cel M. cest T. <sup>45</sup> qar il D. <sup>46-46</sup> apropria T.  
<sup>47</sup> eops M: oeps T.

became vacant, of whosoever fee the church were, the King would present as by reason of the time of vacancy, and since they have confessed that they appropriated the said church without etc., and by that appropriation our Lord the King would lose the benefit of presenting in the time of vacancy if the church became vacant, judgment for the King and we pray a writ to the bishop etc.

## II.

*Quare impedit* by the King against an abbot, by reason of an appropriation.

This sheweth to you our Lord the King by William of Langeleye who is here who sues for the King, that the abbot of St. James outside Northampton wrongfully prevents him from presenting a proper parson to the church of Scropton etc. which lies in his gift. And in so much wrongfully as to him it belongs to present for the reason that one Simon of Montague was seised of the advowson of the said church and presented a clerk of his, who on his presentation was received etc., in the time etc. of King Edward father of the present King. By that clerk's death the church is now vacant. And the said Simon of Montague did enfeof one Keylmersh, sometime abbot of St. James aforesaid, predecessor etc. of the advowson of the said church, to him and to his said church of St. James and to his successors for ever. And that Keylmersh predecessor (etc.) appropriated the said church, to hold to himself and to the said church of etc., and to his successors, in their own uses for ever, without the assent and the will of the said King Edward father of the present King. By reason of that appropriation an action accrued to our Lord the King to present to the said church. Then from King Edward the father etc. there descended the right of the presentation to our Lord the present King, as to his son and heir. Thus it belongs etc. And in this matter the said abbot and William wrongfully disturb him etc. And if etc., ready etc. on behalf of the King.

*Herle.* We do not think that the King wants, or ought, to be received to such a demonstration. For they said that the church is vacant, and afterwards they said that the abbot appropriated it to hold



que la Eglise est<sup>1</sup> pleyne issi vnt il assigne ij contrarijs en le Counte etc.<sup>2</sup> et W. vous dit qil est vicare de mesme la Eglise et institut et autre chose nad il ne autre <sup>3</sup>chose<sup>3</sup> cleyme en la auoweson.

*Toud.* Qant a ceo que vous ditz que nostre demoustraunce est contrariaunt vous dites talent<sup>4</sup> que lapropriacion nous donne accion par quei il<sup>5</sup> couent conter<sup>6</sup> que vous apropiastes et vous dioms que la Eglise est voide de droit qant au<sup>7</sup> Roi tut seet vous eynz par vostre apropiacion.

*Malm.* Vnqore iugement que vous nauet dit que labbe et<sup>8</sup> lauoweson sont tenu du Roi en chief ne de nul autre seigneur<sup>9</sup> inmediate issi que par negligence <sup>10</sup>de nul autre seigneur<sup>10</sup> que ne cleyment pas solom statut apres lapropriacion auantage purra acrestre au Roi etc.

*Toud.* Nous<sup>11</sup> dioms que Labbeie est tenu du Roi en chief et de la fundaunce<sup>12</sup> ces<sup>13</sup> auncestres et ceo <sup>14</sup>vous<sup>15</sup> suffit et tut ne <sup>16</sup>fut etc.<sup>14</sup> par<sup>16</sup> reson<sup>17</sup> del apropiacion le Roi deit presenter.

*Herle.* Vnqore iugement de cele demoustraunce qil<sup>18</sup> vnt dit en lour Counte<sup>19</sup> a nostre seigneur le Roi apent apresenter par reson de vn apropiacion que vn G<sup>20</sup> iadis etc. predecessour etc. dust auoir fait en temps le Roi E. pere etc. del eglise meem qest proprement<sup>21</sup> chose espirituel et doncqe dient il que del Roi E. descendist etc.<sup>22</sup> <sup>23</sup>a Roi<sup>23</sup> qore est <sup>24</sup>que soune proprement en<sup>24</sup> laite qar<sup>25</sup> apropiement<sup>26</sup> de Eglise ne nest autre chose que attrere les frus en propres oeps par quei nentendoms mye que cele apropiacion doune title a nostre seigneur le Roi a presenter que est forfetur de patronage qest layte et demandoms iugement. Et dautrepart lauoweson nest pas tenu du Roi eynz de vn Hawise et les predec(essours) Labbe tyndrent de vn Robert lauowes(on) qy estat le dit Hawise <sup>27</sup>ad ore est<sup>27</sup> issint que cele auoweson est<sup>28</sup> regard(aunt) <sup>29</sup>al hon(ur) de Leyc(ester).<sup>29</sup>

*Toud.* Par vostre primere r(espounse)<sup>30</sup> vous grauntez<sup>31</sup> lapropriacioun par quei nous demaundoms iugement etc.<sup>32</sup> la ou vous dites que lauoweson est tenue de vne Hawise et noun pas du Roi. de qi quele<sup>33</sup> est<sup>34</sup> tenue le Roi present(era)<sup>35</sup> en temps de vacacioun.

*Herle.* Nous vous<sup>36</sup> dioms que les predec(essours) <sup>37</sup>cesti Abbe<sup>37</sup>

<sup>1</sup> en *M.* <sup>2</sup> Iugement *M.* *Om. T.* <sup>3-3</sup> rien ne *M, T.* <sup>4</sup> mal *M, T.* <sup>5</sup> illy *M.* <sup>6</sup> auer conte *M.* <sup>7</sup> al *T.* <sup>8</sup> ne *M, T.* <sup>9</sup> *Om. T.* <sup>10-10</sup> dautre seigneur *M.* des autres seignurs *T.* <sup>11</sup> *Add:* vous *M.* <sup>12</sup> foundacioun *M, T.* <sup>13</sup> ses *M.* des *T.* <sup>14-14</sup> issint *M.* <sup>15</sup> nous *T.* <sup>16-16</sup> fut pas *T.* <sup>17</sup> *Add:* de la forfetur *M.* <sup>18</sup> qar il *M.* <sup>19</sup> *Add:* que *M, T.* <sup>20</sup> S. *M:* E. etc. *T.* <sup>21</sup> purement *M, T.* <sup>22</sup> le dreit del presentement *M, T.* <sup>23-23</sup> a E le Roy *M.* al Roy E. *T.* <sup>24-24</sup> qest purement *M:* purement *T.* <sup>25</sup> que *M, T.* <sup>26</sup> lapropriacioun *M:* apropiacioun *T.* <sup>27-27</sup> ore ad *M.* tint *T.* <sup>28</sup> *Add:* ore *T.* <sup>29-29</sup> Ag 'al hon(ur) delayte *M.* <sup>30</sup> reson *T.* <sup>31</sup> grauntastes *T.* <sup>32</sup> et *M.* *Add:* et *T.* <sup>33</sup> que ceo *T.* <sup>34</sup> soit *M, T.* <sup>35</sup> presentera *M:* presenta *T.* <sup>36</sup> *Om. T.* <sup>37-37</sup> Labbe *T.*

to his own uses, (thus) supposing that the church is filled (by a parson). Thus they have shown in their count two contraries. And William tells you that he is vicar of the said church, and instituted, and nothing else has he, and nothing else does he claim in the advowson.

*Toudeby.* As to what you say that our demonstrance is contradictory, you talk at random, for the appropriation gives us an action, therefore we must count that you appropriated. And we tell you that the church is vacant by law as to the King, albeit that you are 'in' by your appropriation.

*Malberthorpe.* Still (we demand) judgment because you did not say that the abbey and the advowson are held of the King in chief, or of any other immediate lord, so that by negligence of any other lord who does not claim according to the statute after the appropriation, an advantage could accrue to the King etc.

*Toudeby.* We say that the abbey is held of the King in chief and of the foundation of his ancestors, and this is sufficient for you, and even if it were not etc., the King ought to present by reason of the appropriation.

*Herle.* Still (we demand) judgment of that demonstrance, because they have said in their count that<sup>1</sup> our Lord the King has the right to present by reason of an appropriation which one Keylmersh sometime etc. predecessor etc. was to have made in the time of King Edward father etc. of the said church. And that is properly a spiritual matter. And now they say that from King Edward there descended etc. to the present King, and that sounds properly like a lay matter, for the appropriation of a church is nothing else save the attracting of the issues to (one's) own uses. Therefore we do not think that that appropriation gives a title to the King to present, for (that) is the forfeiture of the patronage which is a lay matter. And we demand judgment. And on the other hand the advowson is not held of the King but of one Avice, and the abbot's predecessors held the advowson of one Robert whose estate the said Avice now has; so that that advowson belongs to the honour of Leicester.

*Toudeby.* By your first answer you grant the appropriation, therefore we demand judgment etc. And<sup>1</sup> whereas you say that the advowson is held of one Avice and not of the King, from whomsoever it is held the King will present in the time of vacancy.

*Herle.* We tell you that the predecessors of this abbot held that

<sup>1</sup> Supplied from *T*.



tiendrent cele Eglise en temps le Roi H(enri) en propres oeps. <sup>1</sup>et cel apropiacioun<sup>1</sup> fut<sup>2</sup> en<sup>3</sup> temps<sup>3</sup> auant statut.

*Toud.* Vous auet conu lapropriacioun <sup>4</sup>qe oste le<sup>4</sup> Roi de<sup>5</sup> auantage de presenter en temps de vacacioun et rien ne moustret dil assent et la volente le Roi ne nul de ses prog(enitours) iugement etc.

*Herle.* Vostre title nest mye de ceo qe vous auet<sup>6</sup> presenter pur ceo qe la eglise se void(a) <sup>7</sup>en temps de vacacion<sup>7</sup> eynz suppos(et) qe lauoweson est forfet qest layte par<sup>8</sup> lapropriacion del Eglise qest espirituele<sup>9</sup> etc.

*Et habuit<sup>10</sup> diem in xva sancti Hillarii etc.*

### III.<sup>11</sup>

Nostre seignur le Rey porta vn *quare impedit* vers Labbe de seynt Iake de hor Norhamtoun et dist qe a tort luy destourbe et point ne luy seoffre presenter couenable persone al Esglise de B. qe voyde est et a sa donesoun apent par la reson qe vn A fu seisi de cel auoweson et presenta vn son clerk R. par noun qe a son presentement etc. par qy mort Lesglise est ore voide en temps de pees etc. le quel A dona cel auoweson al Abbe auaunt dit. Le quel Abbe cel auoweson apropria saunz le cunge et la volente nostre seignur le Rey E. pere le Rei qe ore est parmy quel apropiacioun le droit del auoweson acrust a nostre seignur le Rei qi mort est le quel droit descendist a nostre seignur le Rei qi ore est et issi luy destourbe il a tort etc. et sil veot desdire prest dauerrer pur nostre seignur le Rei.

*Herle.* Nostre seignur le Rei porta ceo bref vers nous et supposa par bref et counte qe lesglise est voide et puis dit en counte countaunt qe Labbe ad aproprie cele Esglise la quele apropiacioun suppose plenerte et nentendoms<sup>12</sup> pas<sup>12</sup> qe<sup>12</sup> a tele demustrance qe est repugnant en luy mesme nostre seignur le Rei veile estre receu.

*Toudeby.* Lapropriacion qe vous auetz fait saunz La volente le Rei donne titil et accioun al Rei a demaunder lauoweson issi qe quant a vous lesglise est pleine et a nostre seignur le Rei voide qe la ou accion

<sup>1-1</sup> issint qe lapropriacioun *M.*    <sup>2</sup> se fist *T.*    <sup>3</sup> *Om. M, T.*    <sup>4-4</sup> qest au *M.*    <sup>5</sup> *Om. M.*    <sup>6</sup> voillez *M.*    voletz *T.*    <sup>7-7</sup> etc. *M.*    <sup>8</sup> *Om. M.*  
<sup>9</sup> espituel *M.*    <sup>10</sup> habent: *M.*    <sup>11</sup> From *E.*    <sup>12</sup> This is added above the line. Originally the passage contained the words *iugement si*. These words have been cancelled.

church in the time of King Henry to their own uses. And that appropriation was in the time before the statute.<sup>1</sup>

*Toudeby.* You have confessed the appropriation which takes away from the King the advantage of presenting in the time of vacancy, and you show nothing as to the assent and the will of the King, or of any of his progenitors. Judgment etc.

*Herle.* Your title is not (derived) from this that you have the presentation because the church has become vacant in the time of vacancy,<sup>2</sup> but you suppose that the advowson which is a lay matter is forfeited by the appropriation of the church which is a spiritual matter etc.

And they<sup>3</sup> have<sup>3</sup> their<sup>3</sup> day in the quindene of St. Hilary etc.

### III.

Our Lord the King brought a *quare impedit* against the abbot of St. James outside Northampton and said that he wrongfully disturbed him and prevented him from presenting a proper parson to the church of Spratton which is vacant and belongs to his gift by the reason that one Simon had been seised of that advowson and had presented a clerk of his; Rous by name, who on his presentation [was admitted and instituted] and by whose death the church is now vacant in time of peace etc. Simon had given that advowson to the abbot aforesaid, and the abbot had appropriated that advowson without the permission and the will of our Lord King Edward father of the present King, on account of which appropriation the right of the advowson accrued to our Lord the King who is dead; and the right descended to our Lord the present King and thus he wrongfully disturbs him, etc. If he will deny it, ready to aver it on behalf of our Lord the King.

*Herle.* Our Lord the King has brought this writ against us and supposed by his writ and count that the church is vacant. Afterwards, in telling the count, he said that the abbot has appropriated the church and that appropriation supposes plenerty. We do not think that our Lord the King will be received to such a demonstration, which is contradictory in itself.

*Toudeby.* The appropriation which you have made without the will of the King gives title and action to the King to demand the advowson, so that as for you the church is filled and as for our Lord the King it is vacant . . . where an action has accrued to him no prescription

<sup>1</sup> 7 Edw. I, st. 2 c. 3.

<sup>2</sup> Meaning, of course, the vacancy of the abbey, with which the vacancy

of the appropriated church might coincide.

<sup>3</sup> Supplied from *M*.



luy acrest nul temps ne court vers luy et demaundoms iugement pur le Roi sil ne veolent altre chose dire.

*Fris.* Vous auetz dit qen temps nostre seignur le Roi E. qi mort est Labbe apropria Lesglise. countre sa volente par quey dreit de presentement luy acrust. et de luy descendist le dreit del aueweson a nostre seignur le Roi qore est. la quel apropiacioun del parsonage est mere espirituele chose et est cause del auowerie qest ley chose. iugement si nostre seignur le Rei voile a tele demustracioun estre receu.

*Ber.* Vous pledez al accioun qar nostre seignur le Rei nad nule altre accioun for qe lapropriacioun del parsonage par qey si vous voletz altre chose dire a saccioun dites.

*Herle.* Le Rei nad mye mustre qe Labbeie est tenuz de luy en chef issi qen tenps de voidaunce nul profit luy purra eschere. iugement.

#### IV.<sup>1</sup>

##### *Quare impedit.*

Le Roi par W. de Langley son atturue porta Le Bref de *Quare impedit* vers Labbe de saint lake de Norhampton et W. de C. et counta qe Simond de Mounteney fust seisi del auoweson et presenta vn E. etc. par qi mort lesglise est ore voide. le qel Simond graunta lauoweson a vn G. adonques Priour etc. predecessour etc. Le qel G. apropria lesglise a sa meson saunz conge le roi E. piere etc. par qel apropiacioun etc. accioun acrust etc. De Roi E. descendist le droit de presentement a nostre seignur le Roi qe ore est issint apent etc.

*Malm.* W. vous dit qil est vicare et autre estat ne cleime. Labbe nentend pas qe le Roi voile a tiele demonstrance estre receu car ils ount counte qe lesglise est voide et peus ils ount counte qe lesglise est pleine par le apropiacioun. issint le counte contrariant.

*Toudeby.* Par la apropiacioun acrust accioun issint voide de droit quaunt al Roi.

*Malm.* Vncore iugement de counte. qar vous nauez pas counte qe lauoweson est tenu en chef del roi ne qe le roi la cleime par negligence dautre seignur solom statut.

<sup>1</sup> From X.

runs against him. And we pray judgment for the King if they will not say (some) other thing.

*Friskenev.*<sup>1</sup> You have said that in the time of our Lord King Edward who is dead the abbot has appropriated the church against his will, whereby the right of presentation accrued to him, and from him the right of the advowson descended to our Lord the present King. That appropriation of the parsonage is a purely spiritual thing, and is a cause of the advowson. [But you show no forfeiture of the advowson] which is a lay thing. Judgment if our Lord the King will be received to such a demonstration.

BEREFORD C.J. You plead to the action because our Lord the King has no other action except on the ground of the appropriation of the parsonage. Therefore if you wish to say some other thing to his action say it.

*Herle.* The King has not shown that the abbey is held from him in chief so that in the time of vacancy any profit could escheat to him. Judgment.

#### IV.

##### *Quare impedit.*

The King through William de Langeleye, his attorney, brought the writ of *quare impedit* against the abbot of St. James of Northampton and William of Walda, and told that Simon of Montague had been seised of the advowson and had presented one Giles etc., through whose death the church is now vacant. And the said Simon had granted the advowson to one Simon then prior etc. predecessor etc. And Simon had appropriated the church to his house without leave from the King Edward father etc., by which appropriation etc. action accrued etc. From King Edward the right of presentation had descended to our Lord the present King. Thus it belongs etc.

*Malberthorpe.* William tells you that he is vicar and claims no other estate. The abbot does not think that the King would wish to be received to such a demonstration: for they have counted that the church is vacant, and afterwards they have counted that the church is filled through the appropriation. Thus the count is contradictory.

*Toudeby.* Through the appropriation the action accrued (to the King); thus (the church) is void in law as to the King.

*Malberthorpe.* Still judgment of the count, because you have not counted that the advowson is held in chief from the King or that the King claims it because of the negligence of another lord, according to statute.

<sup>1</sup> He is not mentioned in the other versions.



*Toudeby.* Labbey est tenu de Roi en chef et de la fundacioun de ses progenitours. issint apent la forfeiture al roi par le apropiacioun fet saunz conge et al Roi apent le presentement en temps de vacacioun tut soit lauoweson tenu dautre.

*Herle.* Appropriacioun nest autre mes acrestre del espiritalte (*sic*) en propres oeps. qel chose ne peut doner tite dauoweson qe est laite et dioms outre qe lauoweson est tenue dune Hawise de T.

*Toudeby.* Donques sumus a vn de lapropriacioun fet saunz conge qe ost(a) le Roi de presentement en temps de vacacion.

*Herle.* Nos predecessurs tindrent lesglise en propres oep en temps le Roi H. auant Lestatut qel apropiacioun feust congeable a tiel temps par La Ley.

### Notes from the Record.

#### I.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 180 verso. Northamptonshire.  
Written by Luding'.

Abbas sancti Iacobi extra Norhamptone et Willelmus de Walda summoniti fuerunt ad respondendum domino Regi de placito quod permittant ipsum Regem presentare idoneam personam ad ecclesiam de Sproctone que vacat et ad ipsius Regis spectat donacionem etc. Et vnde Willelmus de Langeleye qui sequitur pro ipso Rege dicit quod quidam Simon filius Simonis de Monte acuto aliquando fuit seisitus de aduocacione predicte ecclesie, qui ad eandem ecclesiam presentauit quendam Egidium le Rous clericum suum qui ad presentationem suam fuit admissus et institutus tempore pacis tempore Edwardi Regis patris domini Regis nunc per cuius mortem predicta ecclesia modo vacat, et dicit quod predictus Simon postmodum de aduocacione ecclesie predicte feoffauit quendam Simonem de Keylmershe quondam Abbatem sancti Iacobi predecessorem predicti Abbatis nunc, qui quidem Abbas predecessor etc. apropiariauit ecclesiam illam tenendam sibi et ecclesie sue sancti Iacobi et successoribus suis in proprios vsus etc. sine licencia et voluntate ipsius domini Regis patris etc. per quam quidem apropiacionem accreuit accio ipsi domino Regi patri etc. presentandi ad predictam ecclesiam etc. Et de ipso Edwardo Rege patre etc. descendit Ius presentandi etc. isti domino Regi nunc vt filio et heredi etc. predicti Abbas et Willelmus ipsum dominum Regem iniuste impediunt Et hoc paratus est verificare pro domino Rege etc.

Et Abbas et Willelmus per attornatum suum veniunt Et predictus Willelmus dicit quod ipse est vicarius ecclesie predicte, et nichil clamat in aduocacione eiusdem ecclesie.

*Toudeby.* The abbey is held from the King in chief and of the foundation of his ancestors. Thus the forfeiture through the appropriation made without leave of the King belongs to the King. And even be the advowson held from another, the presentation in time of vacancy (of the abbey) belongs to the King.

*Herle.* Appropriation is nothing else than that the spiritualities accrue to one's own uses, and that cannot give a title to the advowson which is a temporalty. Moreover, we say that the advowson is held from one Avise of Kenes.

*Toudeby.* Then we are at one as to the appropriation made without leave and depriving the King of the presentation in the time of vacancy.

*Herle.* Our predecessors held the church in their own uses in the time of King Henry before the statute; and at that time the appropriation was allowed by the law.

### Notes from the Record.

#### I.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 180 verso. Northamptonshire.  
Written by Luding'.

The Abbot of St. James outside Northampton and William of Walda were summoned to answer our Lord the King in a plea that they permit the King to present a proper parson to the church of Spratton which is vacant and which is in the gift of the said King etc. And concerning this matter William of Langeleye who sues for the said King says that one Simon the son of Simon of Montague was seised at one time of the advowson of the said church, and he presented to that church one Giles le Rous, his clerk, who on his presentation was admitted and instituted in time of peace in the time of King Edward father of our Lord the present King, and by his death the said church is now vacant. And he (William of Langeleye) says that the said Simon afterwards enfeoffed of the advowson of the said church one Simon of Keylmershe, sometime Abbot of St. James, predecessor of the said present Abbot, and that Abbot, predecessor etc., appropriated that church to hold to himself and to his church of St. James and to his successors to their own uses etc. without the license and the will of the said Lord the King, father etc. And by that appropriation an action accrued to the said Lord the King father etc. to present to the said church etc. And from that Edward the King, father etc., there descended the right to present etc. to this our Lord the present King as to the son and heir etc., [and] the said Abbot and William unjustly impede the said Lord the King. And this he is ready to aver on behalf of our Lord the King etc.

And the Abbot and William come by their attorney. And the said William says that he is vicar of the said church, and he claims nothing in the advowson of that church.



**Notes from the Record**—*continued*.

Et Abbas defendit vim et iniuriam qu(ando) etc. Et dicit quod non intendit quod dominus Rex velit seu debeat ad huiusmodi narrationem responderi. Dicit enim quod cum idem dominus Rex in narratione sua predicta sumat titulum presentandi etc. racione appropriacionis eiusdem ecclesie, quam dicit predictum Simonem quondam Abbatem sancti Iacoby (*sic*) predecessorem etc. tempore suo fecisse, que quidem appropriacio ecclesie non est nisi de ipsa ecclesia, que est res mere spiritualis : et postmodum per eandem narrationem suam asserit Ius presentandi etc. accreuisse prefato Edwardo Regi patri domini Regis nunc per ipsam eandem appropriacionem, et sic de ipso Edwardo Rege patre etc. Ius presentandi etc. descendisse isti domino Regi nunc : quod quidem Ius presentandi etc. est totum laicale etc. petit iudicium etc. Dicit eciam quod ipse non tenet aduocacionem predicte ecclesie in capite de domino Rege set ipsam aduocacionem tenet de quadam Hawysia de Kenes, et quam aduocacionem predecessores predicti Abbatis prius tenuerunt de Roberto de Kenes, cuius statum eadem Hawysia nunc habet etc. et de antecessoribus ipsius Roberti, et quam iidem Robertus et antecessores sui tenuerunt de honore Leycestr(ie), et non de domino Rege etc. et quod Abbates sancti Iacobi predecessores etc. ecclesiam illam tempore Regis Henrici aui domini Regis nunc tenuerunt, itaque appropriatam etc. Et hoc pretendit verificare etc. per quod idem Abbas non intendit quod dominus Rex debeat seu velit in hac parte responderi etc.

Et Willelmus qui sequitur etc. Dicit quod ad ipsum Regem pertinet ad predictam ecclesiam presentare etc. Dicit enim quod predicta Abbathia sancti Iacobi est de feodo domini Regis et de ipso Rege tenetur in capite per quod si eadem Abbathia per mortem cessionem vel resignacionem Abbatis, seu alio modo vacasset, et predicta ecclesia de Sproctone tempore vacacionis Abbathie etc. vacare contigisset : Dominus Rex racione custodie, tempore huiusmodi vacacionis Abbathie, ad predictam ecclesiam presentaret etc. de cuiuscunque feodo aduocacio eiusdem ecclesie fuisset. Et ex quo predictus Abbas in placitando cogn(oscit) ipsam ecclesiam fore appropriatam, per quam quidem appropriacionem Dominus Rex ab huiusmodi beneficio presentandi ad predictam ecclesiam tempore vacacionis etc. excluderetur omnino, nec idem Abbas ostendit quod appropriacio huiusmodi facta fuerat de assensu seu voluntate Regis, petit iudicium pro domino Rege et breue Episcopo etc.

Dies datus est predicto Willelmo qui sequitur etc. et similiter predictis Abbati et Willelmo de audiendo inde iudicio suo hic a die sancti Hillarii in xv dies in eodem statu quo nunc etc.

**Notes from the Record**—*continued*.

And the Abbot denies force and wrong when etc. And he says that he does not think that our Lord the King would wish, or ought, to be answered to a count of this kind. For he says that while the said Lord the King in his said count takes his title to present etc. by reason of an appropriation of the said church, which he alleges the said Simon, sometime Abbot of St. James, predecessor etc., to have made in his time—and that appropriation of a church is only of the church itself, which is a purely spiritual thing (*res mere spiritualis*). Afterwards by the same count (the King) asserts that the right of presenting etc. accrued to the said Edward the King, father of our Lord the present King, by reason of the same appropriation, and that thus from the said Edward the King, father etc., the right to present etc. descended to this our Lord the present King,—and that right to present etc. is entirely lay (*totum laicale*) etc. (Therefore) he demands judgment etc. He also says that he does not hold the advowson of the said church from our Lord the King in chief but that he holds that advowson from one Avice of Kenes, and the predecessors of the said Abbot held that advowson before now from Robert of Kenes, whose estate the said Avice now has etc., and from the ancestors of that Robert. And Robert and his ancestors held it (the advowson) from the honour of Leicester and not from our Lord the King etc. And (he says) that the Abbots of St. James, predecessors etc. held that church in the time of King Henry grandfather of our Lord the present King, and (that they held it) thus appropriated etc. And this he offers to aver etc., and therefore he (the said Abbot) does not think that our Lord the King ought or would wish to be answered in this matter etc.

And William who sues etc. says that it belongs to the said King to present to the said church etc. For he says that the said abbey of St. James is of the fee of our Lord the King and is held from the said King in chief, wherefore if the said abbey should become vacant by the death, cession, or resignation, of the abbot or in some other way, and if it should happen that the said church of Spratton should be vacant at the time of the vacancy of the Abbey etc., then our Lord the King would, by reason of the wardship in the time of such vacancy of the abbey, present to the said church etc., of whosoever fee the advowson of the said church might have been. And since the said Abbot does confess in pleading that the said church would be appropriated, and (since) by that appropriation our Lord the King would be wholly excluded from such benefit of presenting to the said church in the time of the vacancy etc., and the said Abbot does not show that such appropriation has been done by the assent or will of the King, he prays judgment for our Lord the King and a writ to the Bishop etc.<sup>1</sup>

A day was given to the said William who sues etc. and likewise to the said Abbot and William to hear their judgment in this matter here on the quindene of St. Hilary in the same state as now etc.

<sup>1</sup> It may be of interest to note that of Mortmain as basis of the King's claim. the record has no mention of the Statute



**Notes from the Record**—*continued*.

Postea ad diem illum predictus Abbas fecit se esson(iari) de malo veniendi etc. Et habuit diem per esson(iatorem) suum hic ad hunc diem scilicet a die Pasche in xy dies proximo sequent(es) etc. Idem dies datus fuit predicto Willelmo qui sequitur etc.

Et modo venit quidam Henricus de Snepestone qui sequitur pro Rege etc. et similiter predictus Abbas per attornatum suum Et Datus est eis dies de audiendo inde iudicio suo hic in octabis sancte Trinitatis in statu quo prius etc.

Postea continuato inde processu, inter ipsum Dominum Regem, et predictum Abbatem. vsque in octab(is) sancti Hillarii anno domini Regis nunc octauo, venit predictus Abbas per attornatum suum. Et Willelmus de Langele qui prius sequebatur pro domino Rege. non sequitur, set solempniter vocatus recessit etc., nec aliquis alius offert se ad sequendum pro ipso domino Rege versus predictum Abbatem in loquela predicta. Ideo consideratum est quod predictus Abbas eat inde sine die etc.

Et istud Iudicium redditum fuit die Sabbati proxima ante medium Quadragesime etc.

**II.**

**Patent Rolls 146, 10 Edw. II., Part I., membr. 30 recto.**

Pro Abbate sancti Iacobi Norhampton(e).

Rex omnibus ad quos etc. salutem. Donacionem et concessionem quas Simon de Cretona fecit Abbacie sancti Iacobi de Norhampton(a) et Walk(elino) Abbati eiusdem loci et Canonicis ibidem deo seruientibus de ecclesia de Sprottona cum omnibus pertinenciis suis in elemosinam puram et perpetuam. Donacionem eciam et concessionem quas Ricardus Gubuin fecit deo et ecclesie beati Iacobi apostoli de Norh(amp)t(ona) et predictis Canonicis de ecclesia de Hortona cum bosco et terris et decimis et elemosinis et beneficiis et cum omnibus pertinenciis suis et de prato de Wulmereshale, Concessionem eciam et donacionem ac confirmationem quas Willelmus de Beton(a) dominus de Teneremund' filius Roberti advocatis Acrebati fecit predicte ecclesie sancti Iacobi et prefatis Canonicis de ecclesia ville de Thrope que est iuxta Norh(amp)t(onam) in puram et perpetuam elemosinam et de decem acris terre in yrkeshale, quas Ansel de Chokes dedit eis, et quadraginta acris terre in flora et vna acra prati in Brademedede cum masagio quod fuit Wau(eri) Disel ex donacione Gerardi Disel et Cecilie vxoris sue ratas habentes et gratas eas pro nobis et heredibus nostris quantum in nobis est, dilectis nobis in Christo Abbati et Conuentui eiusdem loci, et eorum successoribus concedimus et confirmamus, sicut scriptum (*sic*) et carte donatorum predictorum, que ijdem Abbas et Conuentus inde habent racionabiliter testantur.

Notes from the Record—*continued*.

Afterwards on that day the said Abbot caused himself to be essoined *de malo veniendi*. And he had his day by his essoiner here on this day, to wit, on the quindene of Easter next following etc. The same day was given to the said William who sues etc.

And now comes one Henry of Shepestone who sues for the King etc., and likewise the said Abbot by his attorney. And a day was given them to hear their judgment in this matter here on the octaves of Holy Trinity in the state in which before etc.

Afterwards, the process in this matter between the said Lord the King and the said Abbot having been continued until the octaves of St. Hilary in the eighth year of our Lord the present King, there came the said Abbot by his attorney. And William of Langele, who before now was suing for our Lord the King, has not come, but on being solemnly called went away etc., nor did anyone else present himself to sue for the said Lord the King against the said Abbot in the said cause. Therefore it was considered that the said Abbot go without day in this matter etc.

And this judgment was given on the Saturday next preceding Mid-Lent.

## II.

Patent Rolls 146, 10 Edw. II., Part I, membr. 30 recto.<sup>1</sup>

On behalf of the Abbot of St. James of Northampton.

The King to all to whom etc. greeting. Ratifying and agreeing to the gift and grant which Simon of Cretona made to the Abbey of St. James of Northampton, and to Walkelin Abbot of that place, and to the canons<sup>2</sup> there serving God, of the church of Spratton with all its appurtenances, in pure and perpetual alms; also the gift and grant which Richard Gubuin made to God and to the church of St. James the Apostle of Northampton<sup>3</sup> and to the said canons, of the church of Horton with a wood and lands and tithes and alms and benefices and with all their (*suis*) appurtenances and of the meadow of Wolmershall; also the grant and gift and confirmation which William of Beton(a), lord of Teneremund, son of Robert the advocate of Arras, made to the said church of St. James and to the said canons, of the church of the vill of Thrope which is near Northampton, in pure and perpetual alms, and of ten acres of land in Wyrkeshale, which Ansel de Chokes gave them, and 40 acres in Flore and one acre of meadow in Bradmead with the messuage that was Wa(rner) Disel by the gift of Gerard Disel and Cecily his wife,—we do for ourselves and our heirs, so far as it concerns us, grant and confirm the same<sup>4</sup> to our beloved in Christ the Abbot and convent of that place and to their successors, as do reasonably witness the writing and charters of the said donors, which the said Abbot and convent have concerning this matter. In witness etc. Witness the King

<sup>1</sup> Cp. *Cal. Pat. Rolls* 10 Edw. II. pt. I. 524.

<sup>2</sup> Austin friars.

<sup>3</sup> The different descriptions of the

donees undoubtedly correspond with those used in the charters which were being confirmed.

<sup>4</sup> Namely, the grants, donations etc.



**Notes from the Record**—*continued*.

In cuius etc. Teste Rege apud Linc(oln) Vto die Augusti per ipsum Regem nunciante Rogero Damory.

21. THE KING *v.* THE ARCHBISHOP OF YORK AND WYRKESHALE.<sup>1</sup>

Nota le Roy porta soun *quare Impedit* vers le Ercheueske de Euerwyke de vn Eglise etc.

Lercheueske dit qe il ne clama ren si noun cum Metropolitan et ordin(aire) del leu par qei le Roy auoyt bref al Eueske.

Et nota<sup>2</sup> il porta vn autre bref vers le viker de mesme le leu et de mesme la destorbance etc. et la grant destr(esce) retourne et il ne vynt pas par qei le Roy auoyt bref al Eueske.

**Note from the Record.**

De Banco Roll 195a, Mich. 6 Edw. II., membr. 337 verso. Northumberland.  
Written by Luding'.

Willelmus de Langele qui sequitur pro domino Rege optulit se iiij die uersus Magistrum Willelmum de Wyrkeshale de placito quod permittat ipsum Regem presentare idoneam personam ad vicariam ecclesie de Herteburne, que vacat et ad ipsius Regis spectat donacionem, racione Episcopatus Dunolm(ensis) nuper vacantis et in manum (*sic*) ipsius Regis existentis etc.

Et ipse non venit.

Et preceptum fuit vicecomiti quod distringeret eum per omnes terras etc. Et quod de exitibus etc. Et quod haberet corpus eius hic ad hunc diem etc. Et vicecomes modo mand(at) quod predictus Magister Radulphus (*sic*) districtus est per catalla ad valenciam decem solidorum Et nichilominus Ricardus yongsweyn Iohannes Ringgedale Gilbertus de Epeley et Rogerus Datenese manuc(eperunt) eum Ideo ipsi in misericordia etc.

<sup>1</sup> Reported by *C* only.

<sup>2</sup> Interlined.

**Notes from the Record**—*continued*.

at Lincoln on the fifth day of August.<sup>1</sup> By the King himself, as announced<sup>2</sup> by Roger Damory.<sup>3</sup>

21. THE KING *v.* THE ARCHBISHOP OF YORK AND WYRKESHLE.

Note, the King brought his *quare impedit* against the Archbishop of York for a church etc.

The archbishop said that he claimed nothing save as metropolitan and ordinary of the place. Therefore the King had a writ to the bishop.

And note, he brought another writ against the vicar of the same place as to the same disturbance etc. And the grand distress was returned and he did not come. Therefore the King had a writ to the bishop.

**Note from the Record.**

De Banco Roll 195a, Mich. 6 Edw. II., membr. 337 verso. Northumberland  
Written by Luding'.

William of Langele who sues for our Lord the King presented himself on the fourth day against Master William of Wyrkeshale in a plea that he permit the said King to present a proper parson to the vicarage of the church of Hartburn which is vacant and belongs to the said King's donation by reason of the Bishopric of Durham being lately vacant and in the King's hand etc.

And he (Master William) has not come.

And the Sheriff had been commanded that he distrain him by all lands etc. And that from the issues etc. And that he have his body here on this day etc. And the Sheriff now sends word that the said Master William<sup>4</sup> is distrained by chattels to the value of ten shillings. And nevertheless Richard Yongsweyn, John Ringgedale, Gilbert of Eppley and Roger Datenese have mainprised him. Therefore they (are) in mercy etc.

<sup>1</sup> A.D. 1316.

<sup>2</sup> Namely, to the chancery officials.

<sup>3</sup> Walkelin of Duston was abbot from 1180 to 1205, and Adam of Keylmers, or Keyemersh, between 1269 and 1274. Dugdale, *Monasticon Anglicanum*, ed. 1846, vi. 115. The reference given by Tanner (*Notitia Monastica*) and quoted by Dugdale *loco citato*, to a plea in 3 Edw. III, which was to be found on the *quo warranto* rolls of that year and was to relate to the appropriation of the church of Sprotton, is most probably due to confusion, and it may be safely assumed to relate to our case of 6-8 Edw. II. The *quo warranto* roll for Northamptonshire for 3 Edw. III (Assize Rolls 634) has on membr. 10 four pleas which are given in the printed

edition on pp. 514b-516b. Curiously enough, the printed edition adds to the confusion by omitting to insert the number of the membrane in question (10). The two 'Rex' rolls (Assize Rolls 630 and 631) also contain on their respective membr. 10 pleas other than against the abbot of St. James or for the church of Sprotton. On the other hand, there is a plea in 3 Edw. III against this abbot in Roll 634 on membr. 37 (published in the printed edition, *Plac. de Quo Warr.* p. 570), but it relates to a different matter. In any case, at the time of the Dissolution the abbey of St. James was still drawing from the rectory of 'Sprotton' a farm of £14 a year (*Valor Ecclesiasticus* iv. 319).

<sup>4</sup> The roll says Ralph (*Radulphus*).



**Note from the Record**—*continued.*

Et consideratum est quod dominus Rex recuperet presentationem suam uersus predictum Magistrum Willelmum ad predictam vicariam per defaultam etc. Et Magister Willelmus in misericordia.

Et Idem Dominus Rex habeat breue Episcopo. Dunolm(ensi) quod non obstante reclamacione predicti Magistri Willelmi ad presentationem domini Regis ad predictam vicariam idoneam personam admittat etc.

Willelmus Archiepiscopus Ebor(acensis) in misericordia pro pluribus defaultis etc.

Idem Archiepiscopus Ebor(acensis) summonitus fuit ad respondendum Domino Regi de placito quod permittat ipsum Regem presentare idoneam personam ad vicariam ecclesie de Herteburne que vacat et ad ipsius domini Regis spectat donacionem. racione Episcopatus Dunolm(ensis) nuper vacantis et in manu ipsius Regis existentis etc. Et vnde Willelmus de Langeley qui sequitur pro domino Rege dicit quod quidam Robertus de insula quondam Episcopus Dunolm(ensis) fuit seisisus de aduocacione vicarie predicte, vt de Iure patronatus Episcopatus sui predicti, qui vicariam illam contulit cuidam Thome de Heringtone, qui per collationem suam fuit institutus etc. tempore pacis tempore Regis Edwardi patris domini Regis nunc etc. Et dicit quod post mortem predicti Roberti Episcopi etc. successit in Episcopatu predicto quidam Antonius Episcopus etc. per cuius mortem Episcopatus predictus deuenit in seisinam domini Regis racione vacacionis Episcopatus predicti, Et ipso Episcopatu sic vacante, et in manu ipsius Regis existente, vacauit predicta vicaria per mortem predicti Thome vicarii etc. Et ea racione ad ipsum Regem pertinet ad predictam vicariam presentare etc: predictus Archiepiscopus ipsum Regem iniuste impedit etc. Et hoc paratus est verificare pro domino Rege etc.

Et Archiepiscopus per Willelmum de Byngham attornatum suum venit Et dicit quod ipse nichil clam(at) in aduocacione vicarie predicte nisi tanquam Archiepiscopus loci etc.

Ideo Dominus Rex habeat breue Episcopo Dunolm(ensi) quod non obstante reclam(acione) predicti Archiepiscopi ad presentationem ipsius Regis ad predictam vicariam idoneam personam admittat etc.

**Note from the Record**—*continued*.

And it was considered that our Lord the King recover his presentation to the said vicarage against the said Master William by default etc. And Master William in mercy.

And let our said Lord the King have a writ to the Bishop of Durham that notwithstanding the claim of the said Master William he admit, on our Lord the King's presentation, a proper parson to the said vicarage etc.

William, Archbishop of York,<sup>1</sup> in mercy for several defaults etc.

The same Archbishop of York was summoned to answer our Lord the King in a plea that he permit the said King to present a proper parson to the vicarage of the church of Hartburn which is vacant and belongs to the said King's donation by reason of the Bishopric of Durham being lately vacant and in our Lord the King's hand etc. And concerning this matter William of Langeley who sues for our Lord the King says that one Robert Lisle<sup>2</sup> sometime Bishop of Durham was seised of the advowson of the said vicarage, as of the right of patronage of his said Bishopric, and he collated that vicarage on one Thomas of Heringtone, who on that collation was instituted etc. in time of peace in the time of King Edward father of our Lord the present King etc. And he says that after the death of the said Bishop Robert etc. there succeeded to the said Bishopric one Anthony,<sup>3</sup> Bishop etc., by whose death the said Bishopric came into our Lord the King's seisin by reason of the vacancy of the said Bishopric. And the said Bishopric being thus vacant and in the said King's hand, the said vicarage became vacant by the death of the said Thomas, the vicar etc. And for that reason it belongs to the said King to present to the said vicarage etc. (And) the said Archbishop unjustly impedes the King etc. And this he is ready to aver on behalf of our Lord the King etc.

And the Archbishop comes by William of Byngham, his attorney, and says that he claims nothing in the advowson of the said vicarage except as the Archbishop of the place etc.

Therefore let our Lord the King have a writ to the Bishop of Durham that notwithstanding the claim of the said Archbishop he admit, on the King's presentation, a proper parson to the said vicarage etc.

<sup>1</sup> William Greenfield, Archbishop of York 1304-15, had previously been Chancellor (*Cal. Close* 1296-1302, pp. 566, 602, 610; 1302-7, pp. 69, 313; *Cal. Pat.* 1301-7, p. 309), and was frequently employed in diplomatic missions by Edward I (*Cal. Close* 1288-96, p. 122; 1296-1302, pp. 566, 602, 610; 1302-7, p. 69; *Cal. Pat.* 1281-92, pp. 340, 342, 412; 1292-1301, pp. 31, 139, 145, 170; 1301-7, pp. 56-7). He was co-regent during the King's absence in Scotland in 1306 (*Cal. Pat.* 1301-7, p. 448). In

1308 he was present at the Council of Vienne, where the Order of the Temple was condemned (*Chron. Edw. I and II*, ii, 31), but showed kindness to the Templars in his diocese (*Chron. Mon. de Melsa*, ii, 313).

<sup>2</sup> Robert de Insula was Bishop of Durham from 1274 to 1283. Nicolas, *Historic Peerage*, ed. 1857, 590.

<sup>3</sup> Anthony Bek was Bishop of Durham from 1283 to 1310-11. Nicolas, *ibid.*



22. LATIMER *v.* STAPELTONE.<sup>1</sup>

*Quare impedit* ou vn excepcion fut mys auaunt pur bref abatre. pur ceo qe cest vn bref de possession et la partie alegga vn iugement qe se fit vers launcestre le P . . . par qel il fut mys hors de possession et demanda iugement du bref.

Vn Will. Latymer porta soun *quare impedit* deuers Miles de Stapildone et dit coment il apendoit a ly a presenter etc.

*Miles* defendist etc. et demaunda iugement du bref. qen en temps etc. mesme cesti Miles porta soun *quare impedit* vers W. lat. pere mesme cesti W. Lat. de ceste Eglise etc. et rescuery teu terme deuaunt etc. iugement du bref.

*Will.* dit qe le iugement ne ly deyt nure. qil dit qe Miles porta soun *quare impedit* deuers Hamund de G. et W. Lat. pere mesme cesti W. et dit coment apendoit a ly a presenter par la reson qun Anke(tin) fut seisi de xi. verges de tere a qi auouson est apendant de ly descendist a iii. seors cum vn heir *scilicet* a. b. c. la purpartie fete entre eux. ceste auouson alote a la purpartie leynasse de la quel mesme cesti Miles

<sup>1</sup> From G.

## 22. LATIMER v. STAPELTONE.

*Quare impedit*, where an exception was put forward (in order) to abate the writ, (namely,) that this is a possessory writ, and the party alleged a judgment that had been made against the p(laintiff's) ancestor, by which he had been put out of possession. And he demanded judgment of the writ.

One William le Latimer<sup>1</sup> brought his *quare impedit* against Miles of Stapelton<sup>2</sup> and said (that) he had the right to present etc.

Miles defended etc. and demanded judgment of the writ, because in the time etc. this same Miles had brought his *quare impedit* against William le Latimer father of this same William le Latimer, for this church etc., and recovered in <sup>3</sup>such a term, before etc.<sup>3</sup> Judgment of the writ.

William said that that judgment ought not to hurt him, for he said that Miles had brought his *quare impedit* against Hamund Grusey<sup>4</sup> and William le Latimer father of this William, and (had) counted that it was his right to present by the reason that one Anketin was seised of eleven virgates of land to which the advowson is appendant, from him (they) descended to three sisters as to one heir, namely, to A, B, and C. The partition was made between them, this advowson was allotted to

<sup>1</sup> William Latimer had accompanied Edward I to Scotland (Palgrave, *Doc. illus. Hist. Scot.* p. 269) and served there and beyond the sea during the first years of the reign of Edward II (*Cal. Pat.* 1307-13, pp. 120, 176, 305, 561, 569, 592). In 1312 he was appointed Keeper of Scarborough, but the castle was retained, against the King's order, by Henry Percy (*ibid.* pp. 413, 429, 431). He was forbidden to attend the Newmarket tournament in 1313 (*ibid.* p. 520), and was pardoned for his adherence to Lancaster in 1318 (*ibid.* 1317-21, p. 228). He married, before August 15, 1294, Lucy of Twenge, one of the Bruce co-heirs (*Cal. inq. p.m.* iii, No. 213), who divorced him in 1312, granting him the manor of Danby as compensation (*Cal. Close* 1307-13, pp. 466, 540); the house was burnt in 1318 (*Cal. Pat.* 1317-21, p. 282). Latimer died on Friday after St. Matthias' Day, 1327 (*Cal. inq. p.m.* vii, 27).

<sup>2</sup> Miles Stapelton went on a mission to Rome in 1300 (*Cal. Pat.* 1292-1301, p. 538; *Cal. Close* 1296-1302, p. 370), and was steward of Knaresborough Castle, forest and honour after the

death of Edmund of Cornwall (*Cal. Close* 1296-1301, p. 535; 1302-7, pp. 35, 121, 231). He was a commissioner 'de walliis' on the Humber in 1308 and of oyer and terminer in 1309 (*Cal. Pat.* 1307-13, pp. 38, 173, 309). At the siege of Stirling he was in attendance on the Prince of Wales (Palgrave, *Doc. illus. Hist. Scot.* p. 271), and was steward of his household before and after his accession. He was dismissed in 1311 (Tout, in *Dict. Nat. Biog.*), and was afterwards pardoned for his share in Gaveston's death (*Cal. Pat.* 1313-17, p. 22). He married Sibyl de Bellew, one of the Bruce co-heirs (*Cal. inq. p.m.* iv, No. 45; *Cal. Close* 1307-13, p. 440), and a dispute with Lucy of Twenge (see previous note) over wreck of the sea in this inheritance occurred in 1313 (*Cal. Pat.* 1313-17, p. 54). Stapelton was killed at Bannockburn June 24, 1314 (*Chron. Edw. I and II*, i, 231).

<sup>3-3</sup> This refers to the time of the judgment.

<sup>4</sup> A dispute between Hamund Grusey and William Latimer apparently took place about 1309, when Latimer complained that Grusey had broken his house at York (*Cal. Pat.* 1307-13, p. 13).



purchasa. et cest la primere voidance issi etc. *Hamund* vynt et dit qil fut gardeyn dil issue la eynasse et dit qe cele ne fut pas eynasse. lenqueste de ioynt entre M. et H. la quele passa pur H. par qei agarde fut qe M. ne preyt ren par soun bref eynz fut amercie. *hoc non obstante* Miles suy soun bref vers W. lat. qe ne vynt point a la graunt destresce. par qei agarde fust. qe M. recuuerast le presentement uers W. etc. Mes pur ceo qe les iustices aperceurent ben apres qe H. auoit rescuueri le presentement vers M. agarde fut qe M. nust nul execucion. ne bref al Euesqe. iugement si par nul iugement qe se fyt en le bref qe fut auaunt abatu qe ne furent forqe parol(es) de iugement. et ne my iugement. pur ceo qil nauoyt my garr(ant) pusset nostre bref abatre.

*Herle.* Vous conusset ben le iugement. mes vous dites qe garr(ant) lor failly daler a teu iugement. dunqe volet vous dire. qe ly auoit errur.

*Pass.* Ceo ne fut pas errur. car il nauoit nul garr(ant) *vt supra*.

*Scrop.* Nous aleggoms vn iugement. par queu iugement vous futes hors de possession. le quel iugement est auncore en sa force. iugement si a cel bref de possession deuert estre respondu.

*Scrop iustice ad idem.* Coment qe lexecucion du iugement fut suspendu. le iugement ne fut my pur ceo defet. par qei le iugement demurt etc.

*Wesc.* Ieo pos qe W. Lat. vst venu en curt a la graunt destresce. qant il fyt defaute. et M. vst counte deuers ly. et W. vst demaunde iugement. sil dust a ceo bref. qest abatirr<sup>1</sup> ieo entenke qil vst departi quite sanz ior. par qei etc.

Mes pur ceo qe auys fut a la curt. qe ly auoyt vn iugement vncore. et tut fut il mespris. il ne porra my estre redresse par ceste veie. les iustices furrent assentuz dauert done iugement pur sire M. en contre sire Will.

Mes les parties acorderent hors de court etc.

<sup>1</sup> This should probably read *abati r(espondre)*.

the share of the eldest, from whom that same Miles had purchased (it). And that was the first vacancy, thus etc. Hamund came and said that he was the guardian of the issue of the eldest and said that (the vendor) had not been the eldest. The inquest was<sup>1</sup> joined between Miles and Hamund and it found for Hamund, therefore it was awarded that Miles took nothing by his writ but was amerced. Notwithstanding this, Miles sued his writ against William le Latimer who did not come upon the grand distress. Therefore it was awarded that Miles recovered the presentation against William etc. But because the justices afterwards fully perceived that Hamund had recovered the presentation against Miles, it was awarded that Miles had no execution, nor a writ to the bishop. Judgment,<sup>2</sup> whether you can abate our writ by (pleading) any judgment that was made upon a writ which had previously been abated, so that those were only words of a judgment, and not a judgment, because they<sup>3</sup> had no warrant.

*Herle.* You do confess the judgment, but you say that they<sup>4</sup> lacked a warrant to proceed to such a judgment. Do you mean to say, then, that there was an error? <sup>5</sup>

*Passeley.* That was not an error, because they had no warrant (as above).

*Scrope.* We allege a judgment by which you were (put) out of possession, and that judgment is still in force. Judgment whether you ought to be answered to this possessory writ.

SCROPE J. (to the same effect). Albeit that the execution of the judgment was suspended, the judgment was not thereby defeated. Therefore the judgment remains etc.

*Wescote.* I put case that William le Latimer had come into court upon the grand distress (when, in fact, he made default), and Miles had counted against him, and William had demanded judgment whether he ought to (answer) to such a writ which was abated. I understand that he would have been sent away quit without day. Therefore etc.

But because the court was of opinion that the judgment stood, and albeit that it was mistaken, it could not be redressed in that way, the justices were agreed to give judgment for Sir Miles against Sir William.

But the parties came to terms out of court etc.

<sup>1</sup> The text is not clear.

<sup>2</sup> William has here finished his story of the previous judgment and demands judgment in the present case.

<sup>3</sup> The singular in the text seems due to misspelling. The reference is, of course, to the justices. Compare

*ge ly auoyt* in the last paragraph of the report.

<sup>4</sup> The justices.

<sup>5</sup> This question is a trap, because the present proceedings are not in error, but upon a new writ of *quare impedit*.



## Notes from the Record.

## I.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 105. Yorkshire.  
Written by Luding'.

Milo de Stapeltone summonitus fuit ad respondendum Willelmo le Latimer de placito quod permittat ipsum presentare idoneam personam ad ecclesiam de Tenerington que vacat et ad suam spectat donacionem etc. Et vnde idem Willelmus dicit quod quidam Anketinus Malore fuit seisitus de vndecim bouatis terre cum pertinenciis in predicta villa ad quas aduocacio predictae ecclesie pertinet, qui ad predictam ecclesiam presentauit quendam Michaelem de Walkington clericum suum qui ad presentationem suam fuit admissus et institutus tempore pacis tempore H. Regis aui domini Regis nunc. Et de ipso Anketino descendit Ius presentandi etc. cuidam Anketino, vt filio et heredi Et de ipso Anketino quia obiit sine herede de se: descendit Ius etc. cuidam Nicholao vt fratri et heredi. Et de ipso Nicholao quia obiit sine herede de se descendit Ius etc. quibusdam Margerie, Auicie, Nicholae, et Sarre, vt sororibus et heredibus etc. Ita quod dominus Rex de quo predictus Nicholaus tenuit in Capite, post mortem ipsius Nicholai tenentis sui seisiuit predicta tenementa et aduocacionem etc. in manum suam, et vacante postmodum eadem ecclesia per mortem predicti Michaelis, idem dominus Rex. tanquam Custos, ad predictam ecclesiam presentauit quendam Ottonem de Chauent clericum suum qui ad presentationem suam fuit admissus et institutus etc. Et postea facta fuit particio in Cancellaria domini Regis de predictis tenementis et aliis etc. inter ipsas Margeriam, Auiciam, Nicholaam, et Sarram sorores et heredes plene etatis etc. Et concordatum quod ad predictam ecclesiam vicissim presentarent inposterum Racioni turni etc. Et de ipsa Margeria quia ea nupsit cuidam Radulpho Salueyn, descendit Ius propartis sue presentandi etc. cuidam Anketino vt filio et heredi. Et dicit quod dominus Rex. racione minoris etatis ipsius Anketini seisiuit partem ipsam Margeriam contingentem etc. in manum suam, qui quidem dominus Rex vacante predicta ecclesia per mortem ipsius Otonis ad eandem ecclesiam presentauit quendam Henricum de Appelby clericum suum tanquam custos nomine custodie predicti heredis, racione primi turni etc., qui ad presentationem suam fuit admissus et institutus etc. per cuius resignacionem predicta ecclesia modo vacat. Et dicit quod predicta Auicia secunda soror desponsata fuit cuidam Willelmo Burdone qui quidem Willelmus et Auicia de decem denar(iis) redditus in predicta villa et de proparte ipsius Auicie ipsam contingente de aduocacione predicta, feoffarunt quendam Willelmum Le Latimer patrem predicti Willelmi. Et de ipso Willelmo descendit Ius etc. isti Willelmo qui nunc etc. vt filio et heredi etc. Et ea racione ad ipsum Willelmum in ista secunda vacacione ad predictam ecclesiam pertinet presentare racione secundi Turni, ipsam Auiciam contingentis, predictus Milo eum iniuste impedit: vnde dicit quod deterioratus est et dampnum habet ad valenciam Centum Librarum. Et inde producit sectam etc.

## Notes from the Record.

## I.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 105. Yorkshire.  
Written by Luding'.

Miles of Stapeltone was summoned to answer William le Latimer in a plea that he permit him to present a proper parson to the church of Terrington which is vacant and is in his gift, etc. And, concerning this matter the said William says that one Anketin Malore was seised of eleven bovates of land with the appurtenances in the said village, to which (bovates) appertains the advowson of the said church; and he (Anketin) presented to the said church one Michael of Walkington, his clerk, who on his presentation was admitted and instituted, in time of peace, in the time of King Henry grandfather of our Lord the present King. And from that Anketin the right of presenting etc. descended to one Anketin as son and heir. And from this (latter) Anketin, because he died without an heir of his body, the right etc. descended to one Nicolas as brother and heir. And from that Nicolas, because he died without an heir of his body, the right etc. descended to Margery, Avis, Nicola and Sarah as sisters and heirs etc. So that our Lord the King, from whom the said Nicolas held in chief, after the death of the said Nicolas, his tenant, seised into his hand the said tenements and advowson etc., and the church being afterwards vacant through the death of the said Michael, the said Lord the King, as guardian, presented to the said church one Otes. of Chauent, his clerk, who on his presentation was admitted and instituted etc. And afterwards in the chancery of our Lord the King a partition of the said tenements and other etc. was made between the said Margery, Avis, Nicola, and Sarah, sisters and heirs of full age etc. And it was agreed that they should thenceforth present to the said church successively by turns, etc. And from the said Margery, because she married one Ralph Salueyn, the right of her purparty of presenting etc. descended to one Anketin as son and heir. And he (William le Latimer) says that our Lord the King, by reason of the minority of the said Anketin, seised into his hand the purparty belonging to the said Margery, etc., and the said church being vacant through the death of the said Otes our said Lord the King as guardian in the name of wardship of the said heir, by reason of the first turn etc., presented to the said church one Henry of Appelby, his clerk, who on his presentation was admitted and instituted etc. and through whose resignation the said church is now vacant. And he (William le Latimer) says that the said Avis, the second sister, was married to one William Burdone; and the said William and Avis did enfeof one William le Latimer, father of the said William, of ten pence of rent in the said village and of that purparty of the said advowson which belonged to the said Avis. And from that William the right etc. descended to this William who now (sues) as son and heir etc. And by that reason the said William has the right to present to the said church in this second vacancy by reason of the second turn, belonging to the said Avis; (and) the said Miles does unjustly impede him, whereby he says that he has suffered loss and has damage to the amount of one hundred pounds. And as to this he produces suit etc.



**Notes from the Record**—*continued.*

Et Milo per attornatum suum venit. Et defendit vim et Iniuriam qu(ando) etc. Et dicit quod ad ipsum Milonem et non ad predictum Willelmum pertinet presentare ad predictam ecclesiam etc. Dicit enim quod ipse alias in Curia Regis coram Radulpho de Hengham et sociis suis Iusticiariis E. Regis patris domini Regis nunc, termino sancti Michaelis. Anno eiusdem Regis E. tricesimo secundo. apud Eboracum recuperavit presentacionem suam ad predictam ecclesiam, versus Willelmum Le Latimer patrem istius Willelmi cuius heres ipse est, per iudicium redditum in eadem Curia, super consimili breui quare impedit, per defaultam ipsius Willelmi, vbi consideratum fuit quod Idem Milo haberet breue loci Dioces(ano) etc. Et petit iudicium si ad istud breue de possessione quod est breue eiusdem nature prefato Willelmo accio competere possit etc.

Et Willelmus dicit reuera quod predictus Milo tulit predictum breue suum quare impedit super quo allegat predictum iudicium fuisse redditum etc. uersus quendam Hamonem Gruscy custodem terre et heredis Anketini Salueyn. et uersus ipsum Willelmum Le Latimer patrem etc. per vnum Precipe coniunctim etc. Ita quod predictus Hamo tunc venit in eadem Curia. Et predictus Milo narrando uersus eum dixit, quod quidam Ankentinus Malore et Sarra vxor eius vt de iure ipsius Sarre, quondam fuerunt seisiti de vndecim bouatis terre cum pertinenciis in predicta villa. de Teneringtone, ad quas aduocacio predictae ecclesie pertinet, qui ad eandem ecclesiam presentauerunt quendam Magistrum Thomam de Neuille clericum suum qui ad presentacionem suam fuit admissus et institutus tempore pacis etc. Et de ipsa Sarra descendit Ius presentandi etc. cuidam Nicholao vt filio et heredi etc. infra etatem et in custodia cuiusdam Petri Chauent, per concessionem domini Regis tunc existentis, qui vacante predicta ecclesia per mortem predicti Thome ad eandem presentauit tanquam Custos etc. Otonem Chauent clericum suum qui ad presentacionem suam fuit admissus et institutus etc. per cuius mortem predicta ecclesia tunc vacauit Et de ipso Nicholao quia obiit sine herede de se, descendit Ius presentandi etc. ratione predictorum tenementorum quibusdam Nicholae, Margerie, Auicie, et Sarre, vt sororibus et heredibus etc. Inter quas predicta tenementa, ad que aduocacio etc. pertinet fuerunt partita. Et dixit quod quidam Nicholaus de Stapeltone, pater ipsius Milonis, cuius heres ipse est, perquesiuit (*sic*) de predicta Nicholaa sorore antenata et Sarra sorore sua propartes suas etc. Et ea ratione quod ipse Milo habuit statum predictae Nicholae sororis antenate, pertinuit ad ipsum, ad eandem ecclesiam presentare nomine primi Turni etc. : cui predictus Hamo respondit, et dixit quod predicta Nicholaa non fuit soror antenata etc. Immo predicta Margeria etc., quod predictus Milo non dedixit, Ita quod consideratum fuit quod predictus Hamo inde sine die Et predictus Milo nichil caperet per breue suum etc. : Ad quod breue Idem Milo postmodum

## Notes from the Record—continued.

And Miles comes by his attorney, and denies force and wrong when etc. And he says that he, Miles, and not the said William, has the right to present to the said church etc. For he says that aforetime, in the King's court, before Ralph of Hengham and his companions, Justices of King Edward father of our Lord the present King, in Michaelmas term in the thirty-second year of the said King Edward, at York, he (Miles) recovered his presentation to the said church against William le Latimer father of this William whose heir he is, by judgment rendered in the said Court, upon a similar writ *quare impedit*, by default of the said William, when it was considered that the said Miles should have a writ to the Diocesan of the place etc. And he demands judgment whether the said William can have an action on this possessory writ which is a writ of the same kind etc.

And William says indeed that the said Miles did bring his aforesaid writ *quare impedit*, upon which he alleges the said judgment to have been rendered etc., against one Hamund Gruscy, guardian of the land and of the heir of Anketin Salueyn, and against the said William le Latimer father etc., by one *precipe* jointly etc., so that the said Hamund then came into the said court, and the said Miles in counting against him said that one Anketin Malore and Sarah his wife, as of the right of the said Sarah, had at one time been seised of eleven bovates of land with the appurtenances in the said village of Terrington, to which (bovates) the advowson of the said church belongs, and (that) they had presented to the said church one Master Thomas of Neuille, their clerk, who upon their presentation was admitted and instituted in time of peace etc. And (that) from the said Sarah the right of presenting etc. had descended to one Nicolas as son and heir etc., who at that time was<sup>1</sup> below age and by our Lord the King's grant in the wardship of one Peter Chauent, who, as guardian etc., the said church being vacant by the death of the said Thomas, presented to it Otes Chauent, his clerk, who upon his presentation was admitted and instituted etc., and through whose death the said church was<sup>2</sup> then vacant. And (that) from that Nicolas, forasmuch as he died without an heir of his body, the right of presenting etc. by reason of the said tenements (had) descended to Nicola, Margery, Avis, and Sarah, as to sisters and heirs etc., between whom the said tenements, to which the said advowson etc. does belong, were partitioned. And he said that one Nicolas of Stapeltone, father of this Miles, whose heir he is, (had) purchased from the said Nicola, the eldest sister, and from Sarah her sister, their purparties etc. And (he said that) forasmuch as the said Miles had the estate of the said Nicola, the eldest sister, it was his right to present to the church by reason of the first turn etc. And the said Hamund answered him and said that (it was) not the said Nicola (that) was the eldest sister, but the said Margery etc. And the said Miles did not deny this. So that it was considered that the said Hamund (should go) thence without a day, and that the said Miles should take nothing by his writ etc. And to

<sup>1</sup> Or: who was below age and in the wardship of one Peter Chauent, by grant of our Lord the King who then was. <sup>2</sup> Or: became.



**Notes from the Record**—*continued.*

in eadem Curia optulit se uersus predictum Willelmum Le Latimer patrem etc., de predicto placito etc. Ita quod quedam verba iudicii Locuta fuerunt et pronunciata per Iusticiarios, per que predictus Milo dicit se recuperasse presentacionem suam uersus predictum Willelmum, ad predictam ecclesiam, que quidem verba nullum sorciebantur effectum Iudicii nec idem Milo execucionem inde hucusque habere potuit, scilicet mandando loci diocesano, quod non obstante reclamacione ipsius Willelmi, ad presentacionem predicti Milonis ad predictam ecclesiam idoneam personam admitteret, vt allegat. Et ex quo superius consideratum fuit quod predictus Milo nichil caperet per predictum breue, versus predictum Hamonem, per quod vigor et effectus eiusdem breuis in posterum fuit extinctus omnino: Curia extunc nullum habuit warantum tenendi processum seu iudicium faciendi super illo eodem breui prius cassato. maxime cum execucio iudicii. si quod fuerit post redditum, penitus cessabat, tanquam erratum ratione prioris iudicii supradicti, contra ipsum Milonem vt predictum est redditum. prout paratus est verificare per recordum eorundem rotulorum etc. petit iudicium etc. et breue episcopo nisi predictus Milo aliud velit respondere etc.

Et Milo dicit quod ipse paratus est verificare per Idem recordum quod ipse tunc presentacionem suam ad predictam ecclesiam per iudicium Curie vt predictum est recuperavit, quod iudicium predictus Willelmus non dedit, nec ostendere potest iudicium illud vnquam fuisse adnullatum, vnde petit iudicium vt prius, si ad istud breue de possessione necesse habeat respondere.

Et super hoc quia visum est Curie, quod expedit certiorari super recordo predicto per Rotulos ipsius Radulphi, qui sunt in Thesaur(aria) etc. Mandatum est Thesaurario et Camerariis quod scrutatis Rotulis etc. mittant hic recordum etc.

Postea Thesaurarius et Camerarii miserunt recordum etc. hic in hec verba :

<sup>1</sup> PLACITA APUD EBORACUM CORAM RADULPHO DE HENGHAM ET SOCIIS SUIS IUSTICIARIIS DOMINI REGIS DE BANCO, DE TERMINO SANCTI MICHAELIS, ANNO REGNI REGIS E. FILII REGIS H. TRICESIMO SECUNDO.<sup>1</sup>

Ebor. Hamo Gruscy custos terre et heredis Anketilli Saluayn. summonitus fuit ad respondendum Miloni de Stapeltone de placito quod ipse simul cum Willelmo Le Latimer seniore, permittat ipsum presentare idoneam. personam ad ecclesiam de Tyneringtone, que vacat, et ad suam spectat donacionem etc. Et vnde queritur quod predicti Hamo et Willelmus eum iniuste impediunt etc. Et vnde Idem Milo per attornatum suum dicit, quod quidam Anketillus Malore et Sarra vxor eius, vt de Iure ipsius Sarre, fuerunt seisisi

<sup>1-1</sup> The record gives this heading as part of the text.

**Notes from the Record**—*continued*.

that writ the same Miles afterwards presented himself in the same court against the said William le Latimer father etc., in the said plea etc. So that there were said and pronounced by the justices certain words of (a) judgment, by which the said Miles says that he recovered his presentation to the said church against the said William, but those words did not have any effect as a judgment nor has the said Miles hitherto been able to have execution thereof, as he alleges,<sup>1</sup> namely, by an order to the Diocesan of the place that notwithstanding the claim of the said William he admit a proper person to the said church upon the presentation of the said Miles. And since above it was considered that the said Miles should take nothing by the said writ, against the said Hamund, by which (judgment) the validity and effect of the said writ for the future became altogether extinct, (and since) the court did thenceforth have no warrant to hold a process or make judgment upon that same writ which had been previously quashed, especially since the execution of the judgment, if any had afterwards been rendered, ceased entirely as erroneous<sup>2</sup> by reason of the said former judgment rendered against the said Miles as aforesaid, as he is ready to aver by record of the same rolls etc.—therefore he demands judgment etc. and a writ to the bishop, unless the said Miles should wish to answer something else etc.

And Miles says that he is ready to aver by the same record that he did then recover by judgment of the court as aforesaid his presentation to the said church, and the said William does not deny that judgment, nor can he (William) show that that judgment has ever been annulled, wherefore he (Miles) demands judgment as before, whether he need answer to this possessory writ.

And thereupon, since it appeared to the Court that it is expedient to be certified as to the said record by the rolls of the said Ralph, which are in the Treasury, the Treasurer and Chamberlains were ordered that having searched the rolls etc. they send here the record etc.

Afterwards the Treasurer and Chamberlains sent here the record etc. in the following words :

PLEAS AT YORK BEFORE RALPH OF HENGHAM AND HIS COMPANIONS, JUSTICES OF THE BENCH OF OUR LORD THE KING, OF THE TERM OF SAINT MICHAEL, IN THE THIRTY-SECOND YEAR OF THE REIGN OF KING EDWARD SON OF KING HENRY.

York. Hamund Grusey, guardian of the land and the heir of Anketil Saluayn, was summoned to answer Miles of Stapeltone in a plea that he, together with William le Latimer the elder, permit him to present a proper parson to the church of Terrington, which is vacant, and is in his gift etc. And concerning this matter he complains that the said Hamund and William do unjustly impede him, etc. And concerning this matter the said Miles says by his attorney that one Anketil Malore and Sarah his wife, as in the

<sup>1</sup> This seems the proper place in the translation for *vt allegat*, which in the Latin text stands at the end of the sentence.

<sup>2</sup> The syntax is not quite correct, for *erratum* should perhaps correspond with *iudicii*.



**Notes from the Record—continued.**

de vndecim bouatis terre cum pertinenciis in Tynerington ad quas aduocacio predictae ecclesie pertinet, et ad eandem ecclesiam presentarunt tempore pacis tempore domini H. Regis patris domini Regis nunc, quendam Magistrum Thomam de Neuille clericum suum qui ad presentationem suam fuit admissus et institutus in eadem. Et de predicta Sarra descendit Ius presentandi etc. simul cum predictis tenementis ad que etc. cuidam Nicholao vt filio et heredi etc. infra etatem et in custodia cuiusdam Petri de Chauuent existenti, cui dominus Rex custodiam eiusdem heredis et predictorum tenementorum ad que etc. commisit vsque ad Legitimam etatem ipsius heredis, qui quidam (*sic*) Petrus nomine custodie etc. predicta ecclesia postmodum vacante per mortem predicti Thome, ad eandem ecclesiam presentauit tempore pacis tempore predicti H. patris domini Regis nunc, quendam Otonem de Chauent clericum qui ad presentationem suam fuit admissus et institutus etc. per cuius mortem predicta ecclesia modo vacat etc. Et de ipso Nicholao quia obiit sine herede de se descendit Ius presentandi etc. simul etc. quibusdam Nicholae, Margerie, Auicie, et Sarre, vt sororibus et her(ed)ibus) etc. inter quas predicta tenementa ad que etc. fuerunt partita. Et dicit quod quidam Nicholaus de Stapeltone pater ipsius Milonis cuius heres ipse est perquisiuit de predictis Nicholaa sorore antenata et Sarra propartes suas ipsas de predictis tenementis et aduocacione etc. contingentes, et ea ratione quod ipse habet statum predictae Nicholae sororis antenate : pertinet ad ipsum Milonem ad predictam ecclesiam presentare nomine primi turni etc. : predictus Hamoeum iniuste impedit etc. Vnde dicit quod deterioratus est et dampnum habet ad valenciam quadraginta Librarum. Et inde producit sectam etc.

Et Hamoeum per attornatum suum venit. Et defendit vim et Iniuriam quando etc. Et dicit quod cum predictus Milo in narrando versus eum asserit predictam Nicholaam fuisse sororem etc. antenatam : eadem Nicholaa non fuit soror predicti Nicholai filii Sarre antenata. Immo predicta Margeria fuit soror ipsius Nicholai antenata etc. Et predictus Milo non potest hoc dedicere. Ideo consideratum est quod predictus Hamoeum inde sine (*sic*). Et predictus Milo nichil capiat per breue suum, set sit in misericordia pro falso clam(io) etc.

Idem Milo per attornatum suum optulit se iiij. die uersus predictum Willelmum Le Latimer de predicto placito. Et ipse non venit Et preceptum fuit vicecomiti quod distringat eum per omnes terras etc. Et quod de exitibus etc. Et quod haberet corpus eius hic ad hunc diem etc. Et vicecomes modo mandat quod predictus Willelmus districtus est per catalla ad valenciam dimidie marce etc. Et non manucap(tus) quia non est inuentus etc. Ideo consideratum est quod predictus Milo recuperet presentationem suam ad predictam ecclesiam etc. Et habeat breue custodi spiritualitatis Archiepiscopatus Eboracensis, quod non obstante reclamacione predicti Willelmi, ad presentationem predicti Milonis ad predictam ecclesiam idoneam personam admittat etc. Et recuperet versus eum dampna sua ad valorem medietatis

**Notes from the Record**—*continued*.

right of the said Sarah, were seised of eleven bovates of land with the appurtenances in Terrington, to which belongs the advowson of the said church, and in time of peace, in the time of Lord Henry the King father of our Lord the present King, presented to the said church one Master Thomas of Neuille, their clerk, who upon their presentation was admitted and instituted in the said (church). And from the said Sarah the right of presenting etc., together with the said tenements to which etc., descended to one Nicolas as son and heir etc., who was below age and in the wardship of one Peter of Chauvent, to whom our Lord the King had committed the wardship of the said heir and of the said tenements to which etc., until the lawful age of the said heir. And the said church being afterwards vacant through the death of the said Thomas, that same Peter in the name of wardship etc. presented to the said church, in time of peace in the time of the said Henry father of our Lord the present King, one Otes of Chauvent his clerk, who upon his presentation was admitted and instituted etc., (and) through whose death the said church is now vacant etc. And from the said Nicolas, because he died without an heir of his body, the right of presenting etc. descended, together etc., to Nicola, Margery, Avis, and Sarah, as to sisters and heirs etc., and the said tenements to which etc. were divided between them. And he says that one Nicolas of Stapeltone, father of this Miles, whose heir he is, did purchase from the said Nicola, the eldest sister, and Sarah, their purparties belonging to them of the said tenements and advowson etc., and by this reason, (namely,) that he has the estate of the said Nicola, the eldest sister, it belongs to him, Miles, to present to the said church in the name of the first turn etc.: (yet) the said Hamund does unjustly impede him etc., whereby he says that he has suffered loss and has damage to the amount of forty pounds. And as to this he produces suit etc.

And Hamund comes by his attorney, and denies force and wrong when etc. And he says that whereas the said Miles in counting against him asserts the said Nicola to have been the eldest sister etc.: the said Nicola was not the eldest sister of the said Nicolas son of Sarah, but the said Margery was the eldest sister of the said Nicolas etc. And the said Miles cannot deny this. Therefore it was considered that the said Hamund (should go) hence without (day), and that the said Miles should take nothing by his writ, but should be in mercy for his false claim etc.

The same Miles by his attorney presented himself on the fourth day against the said William le Latimer in the said plea. And the latter has not come. And the sheriff had been ordered that he distrain him by all his lands etc. And that of the issues etc. And that he have his body here on this day etc. And the sheriff now sends word that the said William is distrained by his chattels to the amount of half a mark etc. And he has not been mainprised because he has not been found etc. Therefore it was considered that the said Miles should recover his presentation to the said church etc. And that he have a writ to the keeper of the spiritualities of the Archbishopric of York, that notwithstanding the claim of the said William he admit upon the presentation of the said Miles a proper parson to the said Church etc. And that he recover against him his damages to the amount of one moiety



## Notes from the Record—continued.

eiusdem ecclesie per vnum annum etc., eo quod Archiepiscopus non contulit ecclesiam. Et Willelmus in misericordia etc. Set nulla fiat inde execucio, eo quod predictus Milo nullam rationem habet ad presens presentandi ad predictam ecclesiam prout patet superius etc.

## II.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 125 recto. Yorkshire. Written by Luding<sup>2</sup>.

Milo de Stapiltone cogn(oscit) quod debet Willelmo le Latymer quadraginta marcas, soluend(as) inde eidem Willelmo medietatem in Octabis sancti Martini proximo futuris et aliam medietatem ad festum Natal(ium) domini proximo sequens. Et nisi fecerit concedit quod vicecomes fieri faciat predictos denarios de terris et catallis etc. ad quorumcunque manus etc.

Et sciendum quod ista recognicio facta fuit die Lune proxima ante festum Omnium sanctorum etc.

23. MORTIMER v. THORPE.<sup>1</sup>I.<sup>2</sup>

<sup>3</sup> *De vasto* ou il counta qe il auoit fest wast de ceo qe il auoit fowe tourbis. et la tenant demanda iugement du bref pur ceo qe wast seroit proprement en turberie et ceo na il pas dit en soun bref par qei etc. et le bref agarde boun etc.<sup>3</sup>

Constantyn de<sup>4</sup> Mortimer<sup>5</sup> porta son bref de Wast vers vne dame tenant en dowerie qe volleit *ostens(uram) quare fecit vastum de domibus boscis et gardinis viuar(viis) terris etc.* et assigna le manere<sup>6</sup> *scilicet* qaunt a la terre ou il auoient fowe en fessaunt put en<sup>7</sup> voide<sup>8</sup> arsil et marre enfowant turbe et vendant a la value de xl. li.

<sup>1</sup> Reported by *B, C, F, M, T, X*. This is Vulg. 11.      <sup>2</sup> From *M*. Compared with *B, F*. Headnote from *B*.      <sup>3-3</sup> The headnote in *F* is: Wast ou le pleyntif assigna wast fet en terre par fower de marle, arsil et tourb(es).      <sup>4</sup> *Om. B, F*.  
<sup>5</sup> Mortymer *B*.      <sup>6</sup> *Add: del wast B, F*.      <sup>7</sup> et *F*.      <sup>8</sup> vend(ant) *B*. vendu *F*.

Notes from the Record—*continued*.

of the said church for<sup>1</sup> one year etc., because the Archbishop has not conferred the church. And William is in mercy etc. <sup>2</sup>But let there be no execution thereof, because the said Miles has at present no reason to present to the said church as appears above etc.<sup>2</sup>

## II.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 125 recto. Yorkshire. Written by Luding'.

Miles of Stapiltone recognises that he owes to William le Latymer forty marks, to be paid thence (*inde*) to the said William, (to wit) one moiety on the octaves of Martinmas next following and the other moiety on the feast of the Nativity of our Lord next following. And unless he do that he grants that the sheriff shall cause the said money to be raised from the lands and chattels etc. to whosoever hands etc.

And be it known that this recognisance was made on the Monday next preceding the feast of All Saints etc.

23. MORTIMER *v.* THORPE.

## I.

Writ of waste. The plaintiff counted that the tenant had committed waste in so far as she had dug turf. The tenant demanded judgment of the writ because waste would properly be to a turbary and he has not said this in his writ, wherefore etc. And the writ was awarded good etc.

Constantine Mortimer<sup>3</sup> brought his writ of waste against a lady, tenant in dower. The writ was 'to show why she had committed waste to houses, woods and gardens, fishponds,<sup>4</sup> lands, etc.' And (the plaintiff) assigned the manor, namely, as to the land where they had dug in making (a) pit and selling<sup>5</sup> clay<sup>6</sup> and marl, in digging turf and selling to the value of £40.

<sup>1</sup> *per unum annum*.

<sup>2-2</sup> This must have been the remark on second thought after the justices had found out their mistake. This remark is the key to the whole controversy as to whether the second judgment can be pleaded.

<sup>3</sup> Constantine Mortimer went to France with the King in 1308, and was frequently employed in service abroad 1313-18 (*Cal. Pat.* 1307-13, p. 43; *ib.* 1313-17, pp. 575, 615, 672;

*ib.* 1317-21, pp. 45, 133). In 1318 he had licence to crenellate his house at Sculton, co. Norfolk (*Cal. Pat.* 1317-21, p. 395). He was in the Scottish expedition of 1322 (*ib.* 1321-4, p. 186) and accompanied Pembroke overseas in 1324 (*ib.* p. 186).

<sup>4</sup> 'Vivarium,' a preserve for livestock.

<sup>5</sup> Supplied from *F*.

<sup>6</sup> The word *arsil* means especially potter's clay, but is possibly used here in a wider sense.



*Herle* r(espondit) et dit: vous auez entendu coment il ount counte qe nous auoms fowe turbe et vendu etc. qe serroit proprement Wast en turberie et nad mye fait mencion de turberie en son bref et issint le counte varie de son bref iugement.

*Scrop.* <sup>1</sup>etc. nous<sup>1</sup> vous dioms pas qe vous auietz fait Wast en turberie par qei il ne couient mye<sup>2</sup> mencion de turberie en nostre bref et mesqe nous eussoms counte nous ne porrioms mye auoir eu tiel bref en la Chaunc(ellerie) forsqe entre parceniers mes nous vous assignoms qe vous auiez fait Wast en terre entaunt com vous auiez fowe et pris arsil et vendu et foue turbis et fait put etc.

*Herle.* Depuis qil ount assigne Wast fait en terre de ceo qe nous deussoms auoir fowe turbe la ou nous entendoms pas de ley qe fower turbes soit Wast en terre einz en turberie iugement si etc.

*Berr.*<sup>3</sup> Qei r(esponez) en droit du rem(anant).

Et il r(espondit) au tout sauue ala terre et demaunda iugement etc. depuis qe fower ne git mye en terre arrable en Wast sil deiuent de ceo r(espondre).

*Berr.* R(esponez) a ceo qe il vous surmett(ent) qe vous auez fowe et vendu arsil et marle etc.

*Herle.* Prest dauerrer qe noun<sup>4</sup> qil nous ad surcharge de ceo qe nous deussoms auoir fowe turbis et par taunt ad assigne Wast en terre la ou nous pourrioms auoir fait<sup>5</sup> pour fower turbes et<sup>6</sup> arder (?) pour nos estouers sil se eust pleint qe nous eussoms fowe <sup>7</sup>en marl ou en turberie<sup>7</sup> iugement si nous deuoms a ceo r(espondre) depuis qe ceo nest proprement Wast en terre.

*Wesc.* Homme peut trouer en terre arrable Marl. Turbrie<sup>8</sup> pour qei ne deit homme donqe assigner Wast en terre la ou par le fower des turbes sount auxibien faitz putz et auxibien la terre destruit com par fower de Marl. *Item* homme peut auqun foitz trouer etc. au primer terre arrable et puis marle et puis turberie.<sup>9</sup>

*Herle.* Si la Court agarde qe nous r(espondioms) <sup>10</sup>qe feut de turbrie etc.<sup>10</sup> nous r(espondroms) assetz.

*Berr.* De puis qil veut auerrer qe vous des x. acres de terre arrable par vostre fower de Marle at des turbis etc. vous auez fait putz en la terre par qei la terre est destruit il semle qe vous devez r(espondre).

Et il trauersa etc.

Et ideo etc.<sup>11</sup>

<sup>1-1</sup> nous ne *B, F.*      <sup>2</sup> *Add:* qe nous fesoms *B.*    *Add:* qe nous fasoms *F.*  
<sup>3</sup> *Scrop. F.*      <sup>4</sup> *Add:* et depuis *F.*      <sup>5</sup> *Add:* auowerie *B, F.*      <sup>6</sup> a *F.*  
<sup>7-7</sup> arsil ou tourbe *F.*    <sup>8</sup> arsil tourbe *F.*    <sup>9</sup> tourbe *F.*    <sup>10-10</sup> *Om. F.*    <sup>11</sup> ad xii. etc. *F.*

*Herle* answered and said : You have heard how they counted that we have dug turf and sold etc. and that would properly be waste to a turbary, and he has not made mention of a turbary in his writ, and thus the count is at variance with his writ. Judgment.

*Scrope* (etc.). We do not tell you that you committed waste to a turbary and therefore it is not necessary to mention the turbary in our writ. And even if we had (so) counted we could not have had such a writ in the chancery, save between parceners.<sup>1</sup> But we state that you have committed waste to the land inasmuch as you had dug and taken clay<sup>2</sup> and sold (it), and had dug turf and made (a) pit etc.

*Herle*. Judgment whether etc., since they have assigned waste committed to land in that we are said to have dug turf, while we do not think that to dig turf is by law waste to land, but to a turbary.

BEREFORD C.J. What do you answer as to the rest ?

And he answered as to the whole save as to the land, and demanded judgment etc., whether they ought to answer to that since digging in arable land does not fall under waste.

BEREFORD C.J. Answer to that which they lay to your charge, that you have dug and sold clay<sup>2</sup> and marl etc.

*Herle*. Ready to deny it. <sup>3</sup>And since<sup>3</sup> he has (moreover) charged us with digging turf, and thereby he assigned waste to land, but we could have made avowry<sup>4</sup> to dig turf and burn (it) as our estovers, if he had complained that we had dug in marl or in a turbary, judgment whether we ought to answer to this, since this is not properly waste to land.

*Wescote*. One can find in arable land marl (and a) turbary, why (then) should one not assign waste to land, since by the digging of turf pits are made as well, and the land is as much destroyed, as by digging of marl. Likewise, one can sometimes find, first arable land, then marl, and then (a) turbary etc.

*Herle*. If the court awards that we answer (as to) what was (done to) the turbary etc. we shall answer enough.

BEREFORD C.J. Since he is willing to aver, as to ten acres of arable land, that by digging marl and turf etc. you have made pits in the land, whereby the land is destroyed, it seems that you must answer.

And he traversed etc.

And therefore etc.

<sup>1</sup> See p. 93, note 3 below, where reference is made, in this connection, to Stat. Westm. II. c. 22.

<sup>2</sup> See note 6, p. 91.

<sup>3-3</sup> Supplied from *F*.

<sup>4</sup> Supplied from *B*, *F*.



II.<sup>1</sup>

Wast.

Constantin le mortemer porta bref de Wast.

*Herle.* Il ad assigne Wast com en verite de arsille et marl et en fower de turbes ou de fower de turbes bref est done de Wast de Turberie et nient en tere.

*Wesc.* En tere arable peut homme trouer marl et arsil et peus par de souz turbes par qey le bref est bon et bref de Wast en turber(ie) ne gist fors entre parceners par s(tatu)t mes en ceo cas ne pooms pas auer tiel bref en Chauncerie.

*Herle.* Si vostre bref fust de Wast en turberie nous purrioms auower com pur estouers.

*Berford.* Responez al remenaunt de Wast sauue laturb' par agard.

*Herle.* Qaunt al remenaunt nul Wast fet.

*Alii econtra.*

*Ber. a Herle.* Depeus qil tend dauerer qe vous auez Waste x acres de terre arable en fower darsil marle et de tourbe responez.

*Herle.* Nul Wast fet prest etc.

*Alii econtra.*

III.<sup>2</sup>

En vn bref de Wast dit fut qe il auoit fet Wast <sup>3</sup>en mesouns et en tere.<sup>3</sup> *scilicet*<sup>4</sup> x. acres de tere en fowant arsyl<sup>5</sup> et sabloun et <sup>6</sup>enfowant Torbes.<sup>6</sup>

*Herle.* <sup>7</sup>Fowers de tourbes<sup>7</sup> est en tourberye et ne mye en tere. iugement.

*Berr.* Tut pussez vous estourtire <sup>8</sup>de cel<sup>8</sup> parcel : vous respoundrez en<sup>9</sup> remanaunt.

*Herle.* Nul Wast fet prest etc.

*Et alii*<sup>10</sup> *econtra.*

<sup>1</sup> From X.      <sup>2</sup> From C. Compared with T.      <sup>3-3</sup> de mees terres T.  
<sup>4</sup> Add: en T.      <sup>5</sup> rsill T.      <sup>6-6</sup> fesaunt pus pus et foynant turbe T.      <sup>7-7</sup> fouer  
 turbe T.      <sup>8-8</sup> del T.      <sup>9</sup> al T.      <sup>10</sup> alius T.

## II.

## Waste.

Constantine Mortimer brought a writ of waste.

*Herle.* He has assigned waste as in selling<sup>1</sup> of clay<sup>2</sup> and marl and in digging of turf, whereas for the digging of turf there is given a writ of waste to a turbary and not to land.

*Wescote.* One can find in arable land marl and clay and turf besides. Therefore the writ is good. And a writ of waste to turbary does not lie, by statute,<sup>3</sup> save between parceners. But in this case we cannot have in the chancery a writ like that.

*Herle.* If your writ were for waste to (a) turbary we could avow as for estovers.

BEREFORD C.J. Answer to the rest of waste, save the turf. (This he said) by award.

*Herle.* As to the rest no waste committed.

Issue joined.

BEREFORD C.J. to *Herle.* Since he tenders the averment that you committed waste to ten acres of arable land by digging clay,<sup>2</sup> marl, and turf, answer.

*Herle.* No waste committed, ready etc.

Issue joined.

## III.

In a writ of waste it was said that she had committed waste to houses and to land, namely, (to) ten acres of land, by digging clay<sup>2</sup> and sand and by digging turf.

*Herle.* Digging of turf is in a turbary and not in land. Judgment.

BEREFORD C.J. Albeit that you could dodge this part (of the charge), you will answer as to the rest.

*Herle.* No waste committed. Ready etc.

Issue joined.

<sup>1</sup> *vente* is probably the correct reading, instead of *verite*.

<sup>2</sup> As to the word *arsil* (*arzillum*) see note 6, p. 91. <sup>3</sup> Stat. Westm. II. c. 22.



## Notes from the Record.

## I.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 100 recto. Norfolk.  
Written by Burnedisshe.

Iohannes de Thorpe et Alicia vxor eius in misericordia pro pluribus defaultis.

Iidem Iohannes et Alicia summoniti fuerunt ad respondendum Constantino de Mortuo de (*sic*) Mari de placito quare fecerunt vastum vendicionem distruccionem et exilium de terris domibus boscis viuariis et hominibus que tenent in dotem ipsius Alicie de hereditate predicti Constantini in Scultone ad exheredacionem ipsius Constantini etc. Et vnde Idem Constantinus queritur quod cum predicti Iohannes et Alicia teneant manerium de Scultone cum pertinenciis in dotem ipsius Alicie de hereditate ipsius Constantini iidem Iohannes et Alicia fecerunt vastum vendicionem destruccione et exilium in eodem manerio videlicet prosternendo quamdam Cameram precii decem librarum vnum stabulum precii centum solidorum succidendo et vendendo quadringentas grossas quercus precium cuiuslibet decem solidorum duo milia quercuum minorum precium cuiuslibet duodecim denariorum. irradicando et exstirpando duo milia quercul(orum) minorum precium cuiuslibet trium denariorum Et succidendo trescentas grossas Fraxinos precium cuiuslibet quatuor solidorum mille quercuum minorum precium cuiuslibet duodecim denariorum Et irradicando duo milia fraxinorum minorum precium cuiuslibet trium denariorum Et succidendo quadringentas alnos precium cuiuslibet duorum solidorum. Centum grossas arabillas precium cuiuslibet duorum solidorum quadringentas grossas fagos precium cuiuslibet trium solidorum. sexaginta pomeria bosci precium cuiuslibet duodecim denariorum Fodiendo et vendendo arzillum marlam et turbas <sup>1</sup>et faciendo puteos in decem acris terre<sup>1</sup> precii quadraginta librarum. asseuando viuaria et capiando in eis Lucios breneas Rocheas et percheas ad valenciam decem librarum. Et faciendo exilium de quibusdam Willelmo But et Iohanne de Scultone villanis eiusdem manerii per graues et superonerosas districciones

<sup>1-1</sup> Interlined.

## Notes from the Record.

## I.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 100 recto. Norfolk.  
Written by Burnedisshe.

John of Thorpe<sup>1</sup> and Alice his wife in mercy for several defaults.

The same John and Alice were summoned to answer Constantine Mortimer in a plea why they had committed waste, sale, destruction, and expulsion<sup>2</sup> to lands, houses, woods, fishponds, and men, which (tenements) they hold as dower of the said Alice of the inheritance of the said Constantine, in Scoulton, to the disinheritance of the said Constantine etc. And concerning this matter the said Constantine complains that whereas the said John and Alice hold the manor of Scoulton with the appurtenances as dower of the said Alice of the inheritance of the said Constantine, the said John and Alice did commit waste, sale, destruction, and expulsion in the said manor, to wit, by ruining a building worth £10, and a stable worth 100s., by felling and selling four hundred big oaks worth 10s. each, and two thousand smaller oaks worth 12*d.* each, by uprooting and extirpating two thousand small oaklings worth 3*d.* each, and by felling three hundred big ashes worth 4s. each, one thousand smaller oaks worth 12*d.* each, and by uprooting two thousand smaller ashes worth 3*d.* each, and by felling four hundred alder-trees worth 2s. each, one hundred big maple-trees<sup>3</sup> worth 2s. each, four hundred big beeches worth 3s. each, sixty apple-trees of wood worth 12*d.* each, by digging and selling clay, marl, and turf, <sup>4</sup>and by making pits in ten acres of land<sup>4</sup> worth £40, by draining ponds and taking in them pikes, bream roach and perch, to the amount of £10, and by expelling one William But and John of Scoulton, villains of the said manor, by heavy and excessive distrains, to the disinheritance of the said Constantine whereby he says

<sup>1</sup> John of Thorpe was a commissioner of oyer and terminer in Norfolk and Suffolk from 1305-23 (*Cal. Pat. passim*), especially for maritime cases, notably the disputes between the Cinque Ports and Yarmouth (*Cal. Pat.* 1313-17, p. 514; 1317-21, pp. 290, 294) and the complaints of Norwegian and Flemish merchants (*Cal. Pat.* 1307-13, p. 601; 1313-17, pp. 246, 679-80; 1317-21, pp. 180, 301, 463; *Cal. Close* 1318-23, p. 55). In 1314 and 1318 he was appointed to inquire into the allegations made against royal officers in Norfolk and Suffolk (*Cal. Pat.* 1313-17, p. 243; 1317-21, pp. 100, 299); and in 1317 was a commissioner for the inquiry into weights and measures (*ibid.* 1313-17, p. 688). He was ordered to go beyond seas on the King's service in 1314 (*Cal. Close* 1313-17, p. 103). In 1322 he was arrested as a rebel, but released

(*ibid.* 1318-23, p. 463). He granted the presentation to North Creak church (co. Norf.) for one turn to Hervey of Staunton in 1320 (*ibid.* p. 446). He died before May 20, 1324 (*Cal. inq. p.m.* vi, No. 504).

<sup>2</sup> This relates to the men who are mentioned later on.

<sup>3</sup> *Arabla* means 'tender trees, which we ordinarily call white wood, such as willows, elm-trees, lime-trees, etc. . . . In French *Erable* is the same tree as the Latin *Acer*. . . .'—Du Cange (ed. 1883), i, 319. It seems safe, therefore, to assume that the clerk (who specified all the other kinds of trees) had in mind the maple-tree (*acer*) rather than a general reference to 'white' or 'soft' trees.

<sup>4</sup> This is interlined in the Latin text.



Notes from the Record—*continued*.

ad exheredacionem ipsius Constantini vnde dicit quod deterioratus est et dampnum habet ad valenciam mille librarum Et inde producit sectam etc.

Et Iohannes et Alicia per Simonem de Hedersete attornatum suum veniunt Et defendunt vim et iniuriam qu(ando) etc. Et quo ad vastum quod predictus Constantinus queritur ipsos fecisse de domibus et viuariis Et quo ad arzillum et marlam vendita in terr(is) Et similiter quo ad exilium de hominibus etc. bene defendunt quod ipsi non fecerunt aliquod vastum vendicionem seu exilium inde sicut predictus Constantinus queritur Et quo ad vastum de arboribus in boscis et turbas in terris etc. dicunt similiter quod ipsi non fecerunt inde aliquod vastum seu vendicionem set tantum ceperunt ibidem rationabilia estoueria sua vt in husbote et haybote sicut eis bene licuit. Et de hoc ponunt se super patriam.

Et Constantinus similiter.

Ideo preceptum est vicecomiti quod in propria persona accedat ad predicta tenementa vastata Et ibidem coram Heruico de Stantone vno Iusticiariorum hic et ipso vicecomite si predictum Heruicum ad partes illas venire contigerit venire faciat xii etc. per quos etc. Et qui nec etc. Et per eorum sacramentum in presencia parcium etc. si etc. diligenter inquirat quod vastum etc. Et inquisicionem etc. scire faciat hic in Crastino Purificacionis beate Marie distincte et aperte sub sigillo etc. et sigillis etc.

## II.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 100 verso. Norfolk.  
Written by Burnedishe.

This is a record of another case between the same parties, relating, however, only to woods in Kingston, Kent (quare fecerunt vastum et vendicionem de boscis que tenent in dotem ipsius Alicie de hereditate predicti Constantini in Kyngestone) where they hold 60 acres of wood. The complaint is that fecerunt vastum et vendicionem in predicto bosco videlicet succidendo et vendendo trescentas grossas quercus precium cuiuslibet quinque solidorum quadringentas quercuum minorum precium cuiuslibet duodecim denariorum Ducentas grossas Fraxinos precium cuiuslibet quatuor solidorum Trescentas **minutas** Fraxinos precium cuiuslibet duodecim denariorum Centum grossas arabiles precium cuiuslibet duorum solidorum sexaginta pomeria bosci precium cuiuslibet duorum solidorum sexaginta trembler(ias) precium cuiuslibet duorum solidorum ad exheredacionem ipsius Constantini vnde dicit quod deterioratus est et dampnum habet ad valenciam mille librarum.

The plea is, *mutatis mutandis*, like that in the other case, and so is the order to the sheriff.

Notes from the Record—*continued*.

that he has suffered loss and has damage to the amount of £1000. And as to this he produces suit etc.

And John and Alice come by Simon of Hedersete, their attorney, and deny force and wrong when etc. And concerning the waste which the said Constantine alleges them to have committed to houses and ponds, and concerning the clay<sup>1</sup> and marl sold in (the lands), and likewise concerning the expulsion of men etc., they do defend that they have not committed waste, sale, or expulsion thereof, as the said Constantine complains, and concerning the waste to trees in the woods and the turf in the lands etc. they say likewise that they have not committed any waste or sale thereof, but that they have only taken there their reasonable estovers, as in husbote and haybote as well they might. And concerning this they put themselves upon the country.

And Constantine does the like.

Therefore the sheriff was ordered that he go in his own person to the said wasted tenements and that he cause to come there before Hervy of Stantone, one of the Justices of this Bench, if the said Hervy should happen to come to those regions, and before him the said sheriff, twelve etc., by whom etc., and who are neither etc. And that upon their oath in the presence of the parties etc., if etc., he closely inquire what waste etc. And that he cause the inquisition etc. to be known here on the morrow of the Purification of Blessed Mary, distinctly and openly under the seal etc. and the seals etc.

## II.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 100 verso. Norfolk.  
Written by Burnedisshe.

This is a record of another case between the same parties, relating, however, only to woods in Kingston, Kent (why they have committed waste and sale to woods which they hold as dower of the said Alice of the inheritance of the said Constantine in Kingston), where they hold sixty acres of wood. The complaint is that they have committed waste and sale in the said wood, to wit, by felling and selling three hundred big oaks worth 5s. each, four hundred smaller oaks worth 12*d*. each, two hundred big ashes worth 4s. each, three hundred small ashes worth 12*d*. each, one hundred big maple-trees<sup>2</sup> worth 2s. each, sixty apple-trees of wood worth 2s. each, sixty aspens worth 2s. each, to the disinheritance of the said Constantine, whereby he says that he has suffered loss and has damage to the amount of £1000.

The plea is, *mutatis mutandis*, like that in the other case, and so is the order to the sheriff.

<sup>1</sup> See note 6, p. 91.

<sup>2</sup> See note 3, p. 94.



24. KYME *v.* DONECASTRE.<sup>1</sup>

<sup>2</sup>*De Wasto* porte vers tenant a terme de vie par celi qe lessa tant suy etc.<sup>2</sup>

<sup>3</sup>Phelipp de Kyme<sup>3</sup> porta soun bref de Wast. vers Ion le fitz Nicole de donecastre de tenemenz qil tynt de soun lees a terme de sa vye et taunt suy qe par la defaute I. le Wast fut truue par enqueste. le ior dil enqueste retourne I. ne vynt poynt par qei

P.<sup>4</sup> pria iugement solom verdit denqeste.

Et sur ceo vynt vn Ion de A.<sup>5</sup> et pria qe nul iugement seit fet. qil dit qe ceus tenemenz furrent en ascun tenps en laseisine vn Rauf de la forde qe fut seisi en soun demesne cum de fee. et dit qe mesme cely.R.<sup>6</sup> se obliga a vn Guy de <sup>7</sup>Bonanture<sup>7</sup> en vi. sakes de leyne: priz etc.<sup>8</sup> en statut de Marchantz et le quel R. dona mesme les tenemenz a vn Ion son fitz. et Ion dona a W. et W. dona mesme les tenemenz a mesme cesti Phelip. lequel P. lessa ceus tenemenz al auaunt dit I. fitz Nicol a terme de sa vye. et dyt qe apres le deces Guy les executours G. suyrent bref au vicomte de prendre le corps R.<sup>9</sup> solom statut. le vicomte returna qe R.<sup>9</sup> fut mort par qei les executours suyrent bref a vicomte denquerer. quele teres<sup>10</sup> furrent ent<sup>11</sup> la seisine R.<sup>9</sup> iour qil se obliga et qil les lyuerast ales executours. taunt<sup>12</sup> la dette fu leue. Et<sup>13</sup> les tene- menz lyueriez a les executours a tenir a eus et a lor assignez en noun de fraunct(enement) etc. tanke etc. les queus executours lesserent lor estat a<sup>14</sup> Ion de A.<sup>15</sup> issint est il lor tenaunt de ceus tenemenz par le lees les executours. a queus les tenemenz furrent lyueriez par vertue dil estatut en quel Rauf se auoyt oblige. longe tenps auaunt qe P. ren auoit. par qei il prie qe nul iugement se face en preiudice de ly.

<sup>1</sup> From *G.* Compared with *F.*    <sup>2-2</sup> *Wast* porte vers vn home qe fit defaute par qei Lenqueste fut prise et retourne a qel iour le pleyntife vient et pria iugement sur le verdit. ou suruient vn autre et dit qil fut tenant par statut de March(aundz) et pria qe nul iugement fut rendu en preiudice de ly, par qei le bref se abati *F.*    <sup>3-3</sup> Phelipe de Keym *F.*    <sup>4</sup> *Pass. F.*    <sup>5</sup> Ang(u)r *F.*    <sup>6</sup> Rauf *F.*    <sup>7-7</sup> Bonauenture *F.*    <sup>8</sup> de xlviii m(arcs) *F.*    <sup>9</sup> Rauf *F.*    <sup>10</sup> tenemenz *F.*    <sup>11</sup> en *F.*    <sup>12</sup> *Add: qe F.*    <sup>13</sup> *Add: pur ceo qe troue fust par enqeste qe ceuz tenemenz furent en la seisine Rauf iour qil se oblig(a) si furent F.*    <sup>14</sup> *Add: cesti F.*    <sup>16</sup> Ang(u)r *F.*

24. KYME *v.* DONECASTRE.

(Writ) of waste brought against a tenant for term of life by him who had leased. He sued until etc.

Philip of Kyme<sup>1</sup> brought his writ of waste against John the son<sup>2</sup> of Nicolas of Donecastre for tenements which he held of his lease for the term of his life, and sued until by John's default waste was found by an inquisition. On the day when the inquisition was returned John did not come; therefore

*Philip* prayed judgment according to the verdict of the inquisition.

And thereupon there came one John of A, and prayed that no judgment be made, for he said that those tenements had been at one time in the seisin of one Ralph de la Forde who was seised in his demesne as of fee. And he said that that same Ralph bound himself to one Guy of Bonanture for six sacks of wool, (at the) price etc., under the statute Merchant; and that Ralph gave these same tenements to one John his son, and John gave (them) to W., and W. gave these same tenements to this same Philip, and Philip leased these tenements to the aforesaid John the son of Nicolas for the term of his life. And he said that after the decease of Guy the executors of Guy sued a writ to the sheriff to take the body of Ralph according to the statute. The sheriff returned that Ralph was dead. Therefore the executors sued a writ to the sheriff to inquire what lands had been in Ralph's seisin on the day when he bound himself, and to deliver (those lands) to the executors, until the debt were levied. And the tenements were delivered to the executors to hold to them and to their assignees in the name of freehold etc. until etc. And the (said) executors leased their estate to John of A. Thus he is their tenant of these tenements by the lease of the executors, to whom the tenements were delivered by virtue of the statute under which Ralph had bound himself, long before Philip had anything. Therefore he prays that no judgment be made to the prejudice of himself.

<sup>1</sup> Keeper of the peace 1308-17 (*Cal. Pat.* 1307-13, pp. 123, 468; 1313-17, p. 9; 1317-21, p. 96; *Close* 1307-13, pp. 87, 474; 1313-18, pp. 28, 30) in Lincolnshire. Commissioner 'de walliis' 1310-14 (*Cal. Pat.* 1307-13, pp. 308, 598; 1313-17, p. 154) and of oyer and terminer 1310-16 (*ibid.* 1307-13, *passim*; 1313-17, *passim*). In 1316 he was excused from appearing personally in war, on account of his health and of his good service to the King and to Edward I in previous

wars (*ibid.* 1313-17, p. 558), but went abroad in the following year (*ibid.* pp. 606, 613); and in 1320 he made a pilgrimage to Santiago (*ib.* pp. 310, 423).

<sup>2</sup> A John of Doncaster was appointed Justice of the Common Bench June 5, 1319 (*Cal. Pat.* 1317-21, p. 344; *Foss. Judges*, iii, 251), but there were several men of this name living at that time (*Cal. Pat.* 1317-21, pp. 17, 381, 424); and the tenant in this case was probably a less well-known man.



*Russel.* Sire nous vous dioms qe P. fut seisi de ceus tenemenz en soun demesne cum de fee et lessa a I. a terme de sa vye. et le wast est truue par quei nous prioms iugement.

*Berr. et Herui.* Il vous dit qe ceus tenemenz furrent lyuerez a les executours et a eus et a lor assignez en noun de fraunct(enement) tanqe la dette seit leue par vertue dune reconissaunce qe vn R.<sup>1</sup> fyt deuaunt ceo. qe vous ren aueyet en les tenemenz. a qi il couent qe vous r(espondiez).<sup>2</sup>

*Toud.* Sire si nous sumes oste de cesti bref nous sumes sanz rescuerir car nous ne pooms vers autres porter le bref de wast. mesqe vers le tenaunt a terme de vie a qi nous lessames.

*Berr.* Quidet vous qe la court vous seit tenuz de <sup>3</sup>garder de vos<sup>3</sup> damages en chescun fol purchaz qe vous poet fere. nanil mes qant vous purchaciez<sup>4</sup> les tenemenz si furrent il obligez *vt supra*.

*Toud.* Tut fussent ceus tenemenz obligez auaunt qe nous purchac(eames). vncore cely qest seisi ore par vertue de la reconissaunce <sup>5</sup>put il ore<sup>5</sup> fere wast.

*Herui.* Et vous alet en la chaunc(ellerie) et purchacez teu bref com la chaunc(ellerie) vous dorra en ceo cas.

*Toud.* Ieo ne say my queu bref ceo seroit.

*Berr.* Nous ne sumes pas de leys(ir)<sup>6</sup> a desputer vostre bref a ore. mes alet a la chaunc(ellerie) et assaiet dauer remedie la. et si vous eyer mest(iier) dauer nostre eyde, nous vous eidroms la<sup>7</sup> volunters etc.

## 25. BOUILLE *v.* COGGESHLE.<sup>8</sup>

### I.<sup>9</sup>

#### *Replegiare.*

Nota<sup>10</sup> en vn *Replegiare* le pleyntif counta la prise estre fet longe tens pus le bref purchace par quei retorn fut agarde nent repleuissable q(uia) alias retorn(um).

Et si ne assigna le defendant nule cause pur quei il destreint.

<sup>1</sup> Rauf *F.*    <sup>2</sup> responet *F.*    <sup>3-3</sup> agarder *F.*    <sup>4</sup> purchacastes *F.*    <sup>5-5</sup> ne put  
(il ore cancelled) *F.*    <sup>6</sup> aleiser *F.*    <sup>7</sup> Om. *F.*    <sup>8</sup> Reported by *C, M, T, X, Z.*  
<sup>9</sup> From *C.* Compared with *T.*    <sup>10</sup> Om. *T.*

*Russell.* Sir, we tell you that Philip was seised of these tenements in his demesne as of fee, and leased to John for term of his life. And waste is found. Therefore we pray judgment.

BEREFORD C.J. and STANTON J. He tells you that these tenements were delivered to the executors, and to them and to their assignees in the name of freehold, until the debt be paid, by virtue of a recognisance which one Ralph made long before you had anything in the tenements. And you must answer to this.

*Toudeby.* Sir, if we be ousted of this writ we are without recovery, for we cannot bring a writ of waste against others<sup>1</sup> than the tenant for term of life, to whom we leased.

BEREFORD C.J. Do you think that the court is bound to safeguard (you) from damage in every foolish purchase that you can make? No. But when you purchased the tenements they were (already) burdened (as above).

*Toudeby.* Albeit that these tenements were burdened before we purchased, still he that is seised now by virtue of the recognisance<sup>1</sup> can now<sup>1</sup> commit waste.

STANTON J. And you go to the chancery and purchase such a writ as the chancery will give you in this case.

*Toudeby.* I do not know what writ that would be.

BEREFORD C.J. We are not at leisure to discuss your writ now, but go to the chancery and try to have a remedy there. And if you (should) need our help, we shall gladly help you there<sup>2</sup> etc.

## 25. BOUILLE v. COGGESHALE.

### I.

#### Replevin.

Note that in an (action of) replevin the plaintiff counted that the taking had happened a long time after the purchase of the writ. Therefore an irreplevisable return was awarded because aforetime there had been a return.<sup>3</sup>

And thus the defendant showed no cause why he had distrained.

<sup>1-1</sup> *I.e.* it is possible that he does commit waste, and in such a case we are entitled to a remedy. According to *F* the statement would run 'cannot' (is not allowed to) commit waste.

<sup>2</sup> This is a reference to cases when the justices were summoned to the chancery to assist in the solution of legal difficulties.

<sup>3</sup> See Stat. Westm. II, c. 2.



II.<sup>1</sup>

Nota de *Replegiare* ou la prise fut fete püs la date du bref.

En vn *Replegiare* pur ceo qe le pleintif counta dune prise fait puis la Date de son bref feut agarde qil ne preist rien et qe le defendant auoit retorne sanz faire auowerie par *Berr.* et *Heruy.*

<sup>2</sup>Et sic Nota etc.<sup>2</sup>

III.<sup>3</sup>

*Replegiare.*

En *Replegiare* le bref abati pur ceo qil counta dune prise peus la Date del bref et retourn agarde saunz.

IV.<sup>4</sup>

*Replegiare.*

En vn *Replegiare* le pleintif fust noun suwy et puis auoit bref hors de roules a repleuir etc. et vynt et counta dune prise fete longge temps apres la date de son bref original par qei retorne fust agarde nyent repleuissable et le defendant fust en Court et nauowa pas la prise.

*Et sic nota* qe qant le Counte nest pas garr(ant) du bref homme auera retorn sanz auower etc.

## Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 146 recto. Suffolk.  
Written by Burnedisshe.

Walterus de Coggeshale attachiatus fuit per breue de Iudicio ad respondendum Willemo de Bouille de placito quare cepit aueria ipsius Willelmi et ea iniuste detinuit contra vadium et plegios etc. Et vnde queritur quod

<sup>1</sup> From *M.* Compared with *F.* Headnote from *F.* <sup>2-2</sup> *Om. F.* <sup>3</sup> From *X.*  
<sup>4</sup> From *Z.*

## II.

Note of a *replegiare* where the taking had happened after the date of the writ.

Where the plaintiff in an (action of) replevin counted of a taking that had happened after the date of his writ, it was awarded by BEREFORD C.J. and STANTON J. that he should take nothing and that the defendant should have a return without making avowry.

Note this.

## III.

Replevin.

In an (action of) replevin the writ was abated because (the plaintiff) counted of a taking after the date of the writ. And return was awarded without (avowry).

## IV.

Replevin.

In an (action of) replevin the plaintiff was non-suited and afterwards had a writ out of the rolls to replevy etc. and came and counted of a taking that happened a long time after the date of his original writ. Therefore an irreplevisable return was awarded. And the defendant was in court and did not avow the taking.

Note, therefore, that where the count is not warranted<sup>1</sup> by the writ one will have a return without avowing etc.

## Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 146 recto. Suffolk.  
Written by Burnedisshe.

Walter of Coggeshale<sup>2</sup> was attached by a judicial writ to answer William of Bouille<sup>3</sup> in a plea why he took beasts of the said William and has unjustly detained them, against gage and pledges etc. And concerning this

<sup>1</sup> This translation is based on the supposition that the text should be read *garranti*. The meaning would be, that the count must be in accordance with the original writ.

<sup>2</sup> Walter of Coggeshale was in the service of Humfrey de Bohun, Earl of Hereford and Essex. In 1319 he was assaulted while taking a distress for the Earl at Ardleigh, co. Essex (*Cal. Pat.* 1317-21, p. 367).

<sup>3</sup> William of Bouille was appointed

Warden of the maritime parts of Suffolk with power to compel all persons to aid in defence in 1295 (*Cal. Pat.* 1292-1301, p. 169). In 1314 he made a settlement of some of his land on his son William (*ibid.* 1313-17, p. 113), who died before April 8, 1320 (*Cal. Close* 1318-23, p. 190; *Cal. inq. p.m.* vi, No. 229). The elder William died about May 3, 1324 (*Cal. inq. p.m.* vi, No. 519).



**Note from the Record—continued.**

predictus Walterus die veneris in septimana Pasche anno regni domini Regis nunc quinto in villa de Letheringham in quodam loco qui vocatur Oldebreggesen cepit sexdecim vaccas et illas iniuste detinuit contra vadium et plegios etc. vnde dicit quod deterioratus est et dampnum habet ad valenciam centum solidorum Et inde producit sectam etc.

Et Walterus per Iohannem Childe attornatum suum venit Et dicit quod non debet ei ad narrationem suam ad hoc breue de iudicio respondere etc. Dicit enim quod predictus Willelmus per narrationem suam supponit predictam capcionem factam fuisse predicto die veneris anno predicto, ac data predicti breuis de iudicio est duodecimo die decembris eodem anno R(egni) quinto, et sic data breuis antecedit predictum diem capcionis etc. quod est inconueniens vnde petit iudicium etc.

Et predictus Willelmus non potest hoc dedicere.

Ideo consideratum est quod predictus Walterus inde sine die Et predictus Willelmus nichil capiat etc. Et idem Walterus habeat returnum predictorum aueriorum irreplegiabil(e) etc. Et predictus Wal(el)mus (*sic*) in misericordia etc.

**26. DALAZON v. SAUNTONE.<sup>1</sup>****I.<sup>2</sup>**

*Replegiare* de vn veer ou patet qi hom ne purra pas auer fraunc veer en autri seignorie par prescripcioun sil ne mostre especialte ou qi le seignur receit autre profit en allouaunce etc.

Thom(as) Wane fut sum(one) et (*sic*) respount a I(o)h(an) Turneys par quei atort auoit pris le veer mesme celi I(o)h(an) in Ham(er)smyth en vn leu qest apele Grenedale.

*Scrop.* Th(o)m(as) avowe cest price bone etc. en mesme le leu par la reson qil troua en ces feinz<sup>3</sup> damage fesaunt. et issint les prist il com bien ly lust.

*Denoun.* Thom(as) est seignur de la meite de la ville de H. par reson de quel seignorie il deit auer franc veer par my et par tote la ville. et ceo au(oit) il et ces auncestres vse. de tens etc. et prest del auerer.

*Scrop.* Le leu ou la prise fut fete nest pas en sa seignorie. et del houre qil ad conu qil nest pas seignur forqe de la moite de la ville qi ne se estent pas en autri seignorie. et il ne moustre mye especialte quil le deit auer en autri terre et tiel profit prendre est

<sup>1</sup> Reported by *E, F, M, P, X.*    <sup>2</sup> From *P.*    <sup>3</sup> de meyne cancelled.

**Note from the Record**—*continued.*

he (William) complains that the said Walter did on (March 31, 1312) the Friday in Easter week in the fifth year of the reign of our Lord the present King, in the vill of Letheringham, in a certain place which is called Oldebreggesen, take sixteen cows, and has unjustly detained them against gage and pledges etc., whereby he says that he has suffered loss and has damage to the amount of one hundred shillings. And as to this he produces suit etc.

And Walter comes by John Childe, his attorney, and says that he ought not to answer him to his count on this judicial writ etc. For he says that the said William by his count supposes the said taking to have taken place on the said Friday in the said year, whereas the date of the said judicial writ is (on) the twelfth day of December in the same fifth regnal year (1311), and thus the date of the writ precedes the said day of the taking etc. which is absurd. Wherefore he seeks judgment etc.

And the said William cannot deny this.

Therefore it was considered that the said Walter go hence without a day, and that the said William take nothing etc. And that the said Walter have an irreplevisable return of the said beasts etc. And the said William in mercy etc.

26. DALAZON *v.* SAUNTONE.

## I.

Replevin of a boar where it appears that one cannot have free boar in another's seignory by prescription if one show not specialty or if the lord receive not (some) other profit in allowance etc.

John of Sauntone was summoned to answer John Dalazon<sup>1</sup> why he had wrongfully taken the boar of the said John in Laughton in a place called Langemore.

*Scrope.* Sauntone avows this taking good etc. in the said place by the reason that he found (the boar) in his hay damage feasant. And thus he took it as well he might.

*Denom.* Sauntone<sup>2</sup> is lord of one moiety of the vill of Laughton, by reason of which lordship he ought to have free boar throughout the whole vill. And this (right) he and his ancestors have used from a time etc. And ready to aver this.

*Scrope.* The place where the taking was done is not in his seignory, and since he has confessed that he is lord only of one moiety of the vill, which (moiety) does not extend into another's seignory, and (also since) he does not shew specialty (to prove that) he ought to have that (right) in another's land, and the taking of such profit is against

<sup>1</sup> Both John Dalazon and John of Sauntone are mentioned as commissioners of oyer and terminer in 1311

(*Cal. Pat.* 1307-13, pp. 368, 418).

<sup>2</sup> Correctly, Dalazon; see below.



countre commun droit iugement de sa reconisaunce et prioms retorn.

*Denoun.* Vous ne dut(es) pas. q̄i nous et nos auncestres aueoms eu fraunc veer par reson de nostre seignorie du tens etc.

*Berr.* En vostre seignorie de(mes)ne uous nauerez tiel fraunchice saunz ceo q̄i uous ne deissez. seisi du tens. etc. dounc en autri tere et seignorie uous ne poez pas clamer saunz especialte qe ceo testmoign-(ereit) ou qe vous moustrez quil prent autre profit pur til auauntage auoir.

*Denoun.* Nous sumes seignur de la moite de la ville et T. seignur de lautre. moite de la ville issint q̄i chesqun par resoun de sa seignorie ad eu autiel fraunchice auxi auaunt en nostre seignorie com en sa demeigne. et issint auoms vse auxi auaunt. en sa seignorie com en le nostre <sup>1</sup>de tut<sup>1</sup> tens prest etc.

*Scrop.* Celi q̄i uous auez conu a nous nous prioms quil seit entre et nous dioms q̄i vous et vos auncestres nauez pas vse dauer fraunc veer en nostre prest etc.

*Denoun.* Quei responez vous a ceo q̄i nous dioms q̄i uous le deuez auoir et le auez en nostre seignorie.

*Berr.* Coe nest pas ore en play mes seiez a issue sur ceo qest ore en debast.

*Denoun.* Nous et nos auncestres seisi du tens dont etc. par my et par tote la ville prest etc.

*Et alii econtra.*

*Ideo etc.*

## II.<sup>2</sup>

### Prise de vere.

I. trauers porta *replegiare* vers Thom(as) Wau. de prise dun vere.

*Scrop* auoua etc. en seueral damage fesant.

*Den.* I. est seignur dela moite dela ville de H. par reson de quel seignorie il deit auer fraunc vere par tut la ville et ceo vnt il et ses auncestres seignurs vsez du tens dont memore etc.

*Scrop.* Le lu ou etc. est hors de sa seignorie ou tel profit ne se put estendre en altre seignorie sil ne mostre especialte ou qe nous eoms altre profit en alouance.

Et ceo affirma *Ber.* et dist qen sa seignorie demesne il couent prescription lier.

<sup>1</sup> Interlined.

<sup>2</sup> From X.

common right, (we demand) judgment of his conusance and we pray return.

*Denom.* You do not (deny) that we and our ancestors have had free boar by reason of our seignory, from a time etc.

BEREFORD C.J. You shall not have such a franchise in your own seignory<sup>1</sup> without saying, Seised from a time etc. Therefore you cannot claim (it) in another's land and seignory without specialty which (would) witness this or without shewing that he takes (some) other profit for (your) having such an advantage.

*Denom.* We are lord of one moiety of the vill and Sauntone (is) lord of the other moiety of the vill, so that each (of us) by reason of his seignory has had heretofore such a liberty, in the other's seignory (as well) as in his own. And thus we have used heretofore in his seignory as well as in ours all the time. Ready etc.

*Scrope.* We pray that what you have acknowledged to us be entered, and we say that you and your ancestors did not use to have free boar in our (moiety). Ready etc.

*Denom.* What do you answer to what we say, (to wit) that you ought to have it and (actually) have it in our seignory?

BEREFORD C.J. This is not at plea now, but be at issue as to that which is now under discussion.

*Denom.* We and our ancestors seised from a time whereof etc. throughout the whole vill. Ready etc.

Issue joined.

Therefore etc.

## II.

### Taking of a boar.

John Dalazon brought a *replegiare* against John of Sauntone for the taking of a boar.

*Scrope* avowed etc. in (his) several damage feasant.

*Denom.* John is lord of one moiety of the vill of Laughton by reason of which seignory he ought to have free boar throughout the vill. And this (right) he and his ancestors, (being) lords, have used from a time whereof the memory etc.

*Scrope.* The place where etc. is outside his seignory, while such a profit cannot extend into another's seignory if he shew not specialty or if we have not (some) other profit in allowance.

And this BEREFORD C.J. affirmed, and said that in one's own seignory it is necessary<sup>2</sup> to allege<sup>3</sup> prescription.

<sup>1</sup> This is much more sweeping than the statement attributed to BEREFORD C.J. in III.

<sup>2</sup> This is contrary to III, and agrees with I.

<sup>3</sup> *lier*.



*Den.* Vous estes seigneur del altre moite et chescun et ses auncestres ad vse dauer vere en altre seignorie et en sa seignorie demesne par tut la ville du tens dunt etc.

*Scrop.* Vous et vos auncestres nauez pas vse de tel tens dauer vere en nostre seignorie prest etc.

*Alii econtra.* sans prendre issu sur lestat(e) Th(omas).

### III.<sup>1</sup>

*Replegiare* pur damages fesant ou le pleyntif fut receu de auerer qil et ces auncestres auoyent vse de auer frank ver de temps etc. non obstante qe le defendant dit qe le lew ou la prise fut fete fut hors de sun fee et de sa seignurie etc.

Iohan Dalit'<sup>2</sup> se plaint qun Iohan de Stentone<sup>3</sup> atort prist vn son ver. en la ville de Laug'<sup>4</sup> en vn certain lieu qest appelle N. etc.

*Scrop.*<sup>5</sup> Iohan auowe<sup>6</sup> etc. par la reson qil troua en N. ou il se plaint en ses feins damage fessant.

*Den.* Nous sumes seigneur de la moyete de la ville de L. par reson de qele seignorie nous et nos auncestre du temps dount memorie ne court auoms eu vn fraunc ver etc. daler par my tot la ville iugement si en vostre seueral peussez auowerie faire.

*Scrop.* Nous vous dioms qe N. ou la prise feut faite est hors de vostre fee et hors de vostre seignorie iugement si vous puissez la commune auoir etc.

*Den.* Depuis qe nous volloms auerer qe du temps dount memorie ne court nous et nos auncestres auoms eu fraunc ver par my tote la ville etc. par reson de nostre seignorie iugement etc.

*Scrop.* Depuis qe ceo est en contre commune droit qe aucun eit fraunc veer en autr(i) seueral sil ne soit seigneur etc. iugement si vous peussez hors de vostre seignorie cele fraunchice clamer sanz especialte.

*Denom. vt prius.*

*Berr.* Cely qest seigneur hors de sa seignorie demesne il ne peut tiele fraunchice clamer sanz ceo qil neit vsee par prescripcion du temps par qei de puis qil veut auerer la prise hors de vostre fee <sup>7</sup>et seignorie vous ne poez estre de si bone condicion com serroit le seigneur.<sup>7</sup>

*Scrop. ad idem.* <sup>8</sup>Il ad<sup>8</sup> seure la vne moitie<sup>9</sup> del autre et dit<sup>10</sup> la ou vous auez<sup>11</sup> nulle seignorie la feut la prise faite.

<sup>1</sup> From *M.* Compared with *F.* Headnote from *F.*    <sup>2</sup> Dalc' *F.*    <sup>3</sup> Stantone *F.*  
<sup>4</sup> Langet' *F.*    <sup>5</sup> Om. *F.*    <sup>6</sup> auouwa *F.*    <sup>7-7</sup> pur qei ne serra il resceu *F.*  
<sup>8-8</sup> nous auoms *F.*    <sup>9</sup> Add: de la seignurie *F.*    <sup>10</sup> dyoms qe *F.*    <sup>11</sup> nauez *F.*

*Denom.* You are lord of the other moiety and each (of us) and his ancestors have used to have boar in the other's seignory, and in his own seignory, throughout the vill from a time whereof etc.

*Scrope.* You and your ancestors have not used to have boar from such time in our seignory. Ready etc.

Issue joined, without taking issue on the estate of Sauntone.

### III.

Replevin for damage feasant where the plaintiff was received to the averment that he and his ancestors had used to have free boar from a time etc., although the defendant had said that the place where the taking had been done was outside his fee and his seignory etc.

John Dalazon complains that one John of Sauntone wrongfully took his boar, in the vill of Laughton, in a certain place which is called Langemore etc.

*Scrope.* John avows etc. by the reason that he found (it) in Lange-more (where he complains) in his hay damage feasant.

*Denom.* We are lord of one moiety of the vill of Laughton, by reason of which seignory we and our ancestors have had, from a time whereof memory runs not, free boar etc. to go throughout the vill. Judgment whether you can make avowry 'in your several.'

*Scrope.* We tell you that Langemore where the taking was done is outside your fee and outside your seignory. Judgment whether you can have the common etc.

*Denom.* (We) pray judgment since we are willing to aver that we and our ancestors have had, from a time whereof memory runs not, free boar throughout the vill etc. by reason of our seignory etc.

*Scrope.* Since it is against common right that anyone should have free boar in another's several if he be not lord etc., judgment whether you can, without specialty, claim this franchise outside your seignory.

*Denom* (as before).

BEREFORD C.J. He that is lord cannot claim such a franchise outside<sup>1</sup> his own seignory without having used it by prescription of time. Therefore, since he is willing to aver (that) the taking (was done) outside your fee and seignory, you cannot be in as good a position as would be the lord.

*Scrope* (to the same purpose). He has severed the one moiety from the other and says that the taking was done in that part where you have no seignory.

<sup>1</sup> This is different from the report in I and II, where BEREฟอร์ด C.J. maintains that prescription must be proved even in one's own seignory.



*Denom.* Pur aforcer ceo qe nous auoms dit vous dioms qe nous sumes seignur de la vne moitie etc. et vous de lautre et vous dioms qe nous et nos aunecestres du temps dount memorie etc. auoms etc. par reson de nostre seignorie et vous et vos aunecestres en nostre moitie par reson de vostre seignorie auez eu fraunc ver du temps etc. et demandoms iugement depuis qe vous auez mesme la fraunchice en nostre fraunchice<sup>1</sup> si vous puissez nulle prise etc.

*Berr.* <sup>2a</sup> *Scrop.*<sup>2</sup> Ore ad il aforce<sup>3</sup> son dit responez a ceo.

*Scrop.* Il nount mye vsee cel fraunchice du temps etc. prest etc.

*Et alii econtra.*

#### IV.<sup>4</sup>

##### *Replegiare.*

Vn hom porta vn *replegiare* vers vn altre et dist qe atort prist son veer certeyn iour etc.

<sup>5</sup>Nous auowoms la prise pur ceo qe nous luy trouames en nostre seueral damage fesaunt.

*Denum.* Nous sumes seignur de la meyte de la ville de B. en quele ville nous et nos aunecestres de tenps dount il niad memore auoms eu et vsee daueir fraunche veer parmy tot la ville iugement si pur damage fesaunt poet il auowery faire.

*Scrop.* Cely qe deit auer tel maner de fraunchice hors de sa seignorye demesne il couent qe ceo seit parmy especialte et vous auetz conue qe vous nestes seignur for qe de la meyte de la ville et qe vous auetz vsee cele fraunchice par tote la ville iugement si en altri fee saunz especialte poetz tele seignorye clamer.

*Denum.* Ieo la cleyme par continuaunce de tenps dount il ny ad memore.

*Scrop.* Ceo ne conoise ieo mye mes si vous lauetz fait vous auetz fait le graynor tort.

*Ber.* Cest altri seignorye qe la vostre et vous ne poetz mye clamer ne auoir tele fraunchice en altri seignorye mes qe vous lauetz vsee par prescripcioun de tenps saunz especialte. et si vous le deuetz vser en vostre seignorye demesne il couent qe vous le clametz par prescripcioun de tenps.

<sup>1</sup> seignurie *F.*    <sup>2-2</sup> *Om. F.*    <sup>3</sup> aporte *F.*    <sup>4</sup> From *E.*    <sup>5</sup> Suppl. *Scrope (?)*

*Denom.* To strengthen what we have said, we tell you that we are lord of the one moiety etc. and you of the other. And we tell you that we and our ancestors, from a time whereof memory etc., have etc. by reason of our seignory. And you and your ancestors have had in our moiety free boar by reason of your seignory from a time etc. And we demand judgment whether you can (avow) any taking, since you have the same liberty in our moiety.

BEREFORD C.J. to *Scrope*. Now he has strengthened his statement. Answer to this.

*Scrope*. They have not used this franchise from a time etc. Ready etc.

Issue joined.

#### IV.

##### Replevin.

One brought a *replegiare* against another and said that he had wrongfully taken his boar on a certain day etc.

(*Scrope*.) We avow the taking because we found it in our several damage feasant.

*Denom.* We are lord of one moiety of the vill of Laughton, in which vill we and our ancestors have had, and used to have, free boar throughout the vill, from a time whereof memory runs not. Judgment whether he can make avowry for damage feasant.

*Scrope*. He that is to have a franchise of this kind outside his own seignory must (have it) by specialty, and you have confessed that you are lord only of one moiety of the vill and that you have used this franchise throughout the vill. Judgment whether you can claim such a seignory in another's fee without specialty.

*Denom.* I claim it by continuance from a time whereof memory runs not.

*Scrope*. I do not admit this, but if you have done so,<sup>1</sup> the wrong you have committed is the greater.

BEREFORD C.J. This is a seignory of another than yourself and you cannot claim or have such a franchise in another's seignory <sup>2</sup>without specialty<sup>2</sup> albeit that you have used it by prescription of time. And (even) if you are to use it in your own seignory you must claim it by prescription of time.

<sup>1</sup> *I.e.* continued to use the franchise.

<sup>2-2</sup> This seems the proper place for these words. In the French text they come after 'prescription of time,' but if one were to put them in the

same place in the English sentence, the meaning would be that such a franchise could *never* be claimed, which would be wrong.



*Denum.* Il est seigneur de la vne meite de la ville et nous seigneur del altre meyte et par reson de sa seignorye il et cez auncestres ount eu et vsee. dauoir fraunche veer par tote la ville et nous par reson de nostre seignorye dauer fraunche veer parmy et par tote la vile iugement.

*Scrop.* Neient seisi de tenps dount yniad memore prest etc. et prioms qe cel seit entre en roule qil nous ad conue.

*Et alii contra.*

### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 187 recto. Lincolnshire.  
Written by Luding'.

Iohannes de Sauntone summonitus fuit ad respondendum Iohanni Dalazon de Laghtone de placito quare cepit quendam aprum ipsius Iohannis Dalazon et eum iniuste detinuit contra vadium et pleg(ios) etc. Et vnde idem Iohannes Dalazon per attornatum suum queritur quod predictus Iohannes de Sauntone die Mercurii proxima ante festum decolacionis sancti Iohannis Baptiste anno domini Regis nunc quarto in villa de Laghtone in quodam loco qui vocatur Langemore cepit predictum Aprum ipsius Iohannis Dalazon et eum iniuste detinuit contra vadium et pleg(ios) etc. quousque etc. vnde dicit quod deterioratus est et dampnum habet ad valenciam quadraginta solidorum Et inde producit sectam etc.

Et Iohannes de Sauntone per attornatum suum venit Et defendit vim et Iniuriam qu(ando) etc. Et bene aduocat predictam capcionem et iuste etc. Dicit enim quod ipse predictis die et anno inuenit predictum Aprum ibidem in dampno suo fabas et pisas suas crescentes depascentem et ea ratione ipsum cepit et imparcauit sicut ei bene licuit etc.

Et Iohannes Dalazon dicit quod predictus Iohannes de Sauntone capcionem illam iustam aduocare non potest, Dicit enim quod ipse est dominus medietatis predicte ville de Laghtone ratione cuius domini ipse est in seisina habendi liberum Aprum vbique in villa predicta, et dicit quod ipse et antecessores sui a tempore quo non extat memoria hucusque seisiti fuerunt ratione domini sui predicti<sup>1</sup> huiusmodi libertate habendi liberum Aprum in villa predicta. Et hoc paratus est verificare etc. Et petit iudicium si predictus Iohannes de Sauntone capcionem predicti Apri in dampno suo iustam aduocare possit.

Postea predictus Iohannes Dalazoun (*sic*) non est prosecutus.

Ideo predictus Iohannes de Sauntone inde sine die et predictus Iohannes Dalazoun et plegii sui de prosequendo in misericordia. Et Iohannes de Sauntone habeat returnum predicti Apri etc.

Querantur nomina plegiorum etc.

<sup>1</sup> *Suppl. de.*

*Denom.* He is lord of the one moiety of the vill and we (are) lord of the other moiety. And by reason of his seignory he and his ancestors have had and used to have free boar throughout the vill, and we by reason of our seignory (have used) to have free boar throughout the whole vill. Judgment.

*Scrope.* Not seised from a time whereof memory runs not. Ready etc. And we pray that that of which he has made conusance to us be entered on the roll.

Issue joined.

#### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 187 recto. Lincolnshire.  
Written by Luding?

John of Sauntone was summoned to answer John Dalazon of Laughton in a plea why he took a certain boar of the said John Dalazon and has unjustly detained him, against gage and pledges etc. And concerning this matter the said John Dalazon by his attorney complains that the said John of Sauntone on the (August 26, 1310) Wednesday next preceding the feast of the Beheading of St. John the Baptist, in the fourth year of our Lord the present King, in the vill of Laughton, in a certain place which is called Langemore, did take the said boar of the said John Dalazon and has unjustly detained him, against gage and pledges etc., until etc., whereby he says that he has suffered loss and has damage to the amount of 40s. And as to this he produces suit etc.

And John of Sauntone comes by his attorney and denies force and wrong when etc. And he fully avows the said taking and justly etc. For he says that on the said day and in the said year he found the said boar in the said place to his loss, eating his peas and beans growing there, and for that reason he took and imparked him, as well he might etc.

And John Dalazon says that the said John of Sauntone cannot avow that taking as just. For he says that he is the lord of a moiety of the said vill of Laughton, and by reason of that lordship he is seised of having free boar everywhere in the said vill, and he says that he and his ancestors, from a time whereof memory runs not until now, have been seised by reason of their said lordship of such a franchise of having free boar in the said vill. And this he is ready to aver etc. And he prays judgment whether the said John of Sauntone can avow the taking of the said boar in his damage as just.

Afterwards the said John Dalazon was non-suited.

Therefore the said John of Sauntone (goes) hence without day, and the said John Dalazon and his pledges for the prosecution (are) in mercy. And let John of Sauntone have the return of the said boar etc.

Let the names of the pledges be found out etc.



27. GIFFARD v. CRAUNFORD.<sup>1</sup>I.<sup>2</sup>

*Replegiare* pur damages fesaunt etc. ou le pleyntif dit en sa commune et le defendant dit qil auoyt vne couture issi qe qant ele fut enblaye, ceo fut sun seueral. et qant ele git fryche ceo fut commune.

Vn homme se pleint qun Robert atort prist ses auers etc.

*Den.* Robert vous dit qil troua les auers en N. qest son propre seueral et pur ceo qil les troua damage fessaunt etc.

*Scrop.* Au temps qant il les etc. N. feut nostre commune appurtenaunt a nostre fraunctenement prest etc.

*Den.* Nous auoms dit qe ceo est nostre pree seueral coment peut ceo estre a donqe vostre commune.

*Scrop.* Depuis qe nous volloms auerrer *vt prius* iugement.

*Den.* Nous auoms <sup>3</sup>vn culture<sup>3</sup> ioynant a cel pree et tent vers le southe et vous dioms qant cel culture<sup>4</sup> enblayee ceo est nostre seueral et qant ele git Waret(e) ele est sa commune et vous dioms qe qant au temps de la prise fait ele feut enblaye iugement.

*Scrop. vt prius.*

*Den.* Depuis qe nous volloms auerer qe au temps etc. ele feut enblae iugement si vous ne deuez a ceo r(espondre).

*Berr.* Ne <sup>5</sup>r(espondist) a ceo<sup>5</sup> il dit qe au temps de la prise dount il ad counte ceo feut sa commune etc.

*Den.* Il semle qe noun qe nous lour grauntoms la commune en certain temps et nous la fesoms estre nostre seueral en vn autre temps par qei a eux a dire qe ceo feut lour commune etc. au temps etc. a<sup>6</sup> dire le qel la culture<sup>7</sup> feut a cel temps enblae ou ne mye nous nentendoms pas qil deiuent auenir etc.

*Scrop.* Mesqe nous portassoms vn assise etc. ceo seroit assez a dire qe ceo feut commune appurtenaunt etc. ergo a mout plus fort en ceo cas ou nous sumes einz.

*Berr.* Il couient qe vous r(espondiez) etc. qil vous ount graunte la commune a vn temps etc. et a autre temps la fet<sup>8</sup> seueral pree.

*Scrop.* Illy ad vn chaump vers le southe et vous dioms qe qant cel

<sup>1</sup> Reported by *F*, *M*, *X*.    <sup>2</sup> From *M*. Compared with *F*. Headnote from *F*.  
<sup>3-3</sup> vne cousture *F*.    <sup>4</sup> cousture *F*.    <sup>5-5</sup> resp(o)n(di)t il assez *F*.    <sup>6</sup> sanz *F*.  
<sup>7</sup> cousture *F*.    <sup>8</sup> fount il lour *F*.

27. GIFFARD *v.* CRAUNFORD.

## I.

Replevin for damage feasant etc. where the plaintiff said 'in his common,' and the defendant said that he had a culture so that when it was under crop it was his several and when it lay fallow it was a common.

One complains that one Robert wrongfully took his beasts etc.

*Denom.* Robert tells you that he found the beasts in Wyke which is his own several and because he found them damage feasant etc.

*Scrope.* At the time when he (took) them, Wyke was our common, appurtenant to our freehold. Ready etc.

*Denom.* We have said that this is our several meadow. How, then, can it be your common?

*Scrope.* Since we are willing to aver (he repeated his former statement), judgment.

*Denom.* We have a culture adjoining this meadow and extending southward, and we say that when that culture is under crop then this is our several, and when it lies fallow it is his common. And as to the time of the taking we tell you that (the culture) was (then) under crop. Judgment.

*Scrope* (as before).

*Denom.* Since we are willing to aver that at the time etc. it was under crop, judgment whether you ought not to answer to this.

BEREFORD C.J. Has he not answered <sup>1</sup>to this<sup>1</sup>? He says that at the time of the taking of which he has counted this was his common etc.

*Denom.* It seems that (he has) not (answered). For we grant them the common at a certain time, and we make this our several at another time. Therefore we do not think that they can get (to this) that they (should be allowed to) say it was their common etc. at the time etc. (without<sup>2</sup>) saying whether at that time the culture was or was not under crop etc.

*Scrope.* Even if we had brought an assize etc. it would be enough to say that this was (a) common appurtenant etc. *A multo fortiori* (that is true) in this case where we are 'in.'

BEREFORD C.J. You must answer etc., for they have granted you the common at one time etc., and have made it (their) several meadow at another time.

*Scrope.* There is a field toward the south and we tell you that when

<sup>1-1</sup> Or: enough (according to *F*). Bereford's words were apparently taken by each reporter to mean a different thing (*assez* and *a ceo*).

<sup>2</sup> Supplied from *F*.



champ git Warret <sup>1</sup>si deuoms communer et en autre temps apres les feinz enportez et vous dioms qe a cel temps le Champ git Warret<sup>1</sup> etc.

*Den.* Nous volloms auerer qe<sup>2</sup> cele culture<sup>3</sup> qe feut auant nome feut enblae prest etc.

*Scrop.* La ou tot le Champ git Waret com le tierce an etc. mesqe vous eussez seme vn acre etc. par conge de les veisynz ceo<sup>4</sup> nous oustera pas qe nous naueroms nostre commune com appendaunt.

Et au drein furent a issue qe au temps de la prise la culturé<sup>3</sup> feut enblae.

*Et alii econtra.*

## II.<sup>5</sup>

Auowerie ou la place qe dust auer este Warette et commune fu enblae. similis in . . . . . a M. XIII. de transgressionie.

Auowerie fust fet en seueral pur damage fesaunt.

*Scrop.* Al temps de la prise nostre commune apurtenaunt et cet.

*Denham.* Qaunt la place gist Warette ele est sa commune mes ele fust emblaie a cel temps.

*Scrop.* A cel temps nostre commune prest.

*Denh.* De peus qe nous vous grauntoms commune a vn temps et ne mie a autre temps vous nauendrez pas a si general auerement saunz respondre a nous.

Et fust oste del auerement par *Berf.*

*Scrop.* Cel place est parcel dun chaump qel chaump fust Warette a tel temps et tut eit il seme vne parcelle par suffraunce des veisins ceo ne doit pas oster nous de nostre c(ommune).

Peus *Scrop* tendi dauerer qe cel place fust Warette al temps de la prise.

*Et alii econtra.*

*Et sic ad patriam.*

## Notes from the Record.

### I.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 196 recto, Oxfordshire.  
Written by Luding<sup>1</sup>.

Robertus de Craunford in Misericordia pro pluribus defaultis.

Idem Robertus summonitus fuit ad respondendum Georgio Giffard de

<sup>1</sup> *Om. F.*    <sup>2</sup> *Add: a cel temps F.*    <sup>3</sup> *cousture F.*    <sup>4</sup> *Add: ne F.*  
<sup>5</sup> From X.

that field lies fallow then we ought to common, and (also) at another time after the hay is carried. And we tell you that at that time the field lay fallow etc.

*Denom.* We are willing to aver that the culture which was mentioned before was under crop. Ready etc.

*Scrope.* When the whole field lies fallow, as (it does every) third year, albeit you had sown one acre etc. by leave of the neighbours, that would not oust us from having our common as appendant.

And finally they were at issue (on the statement) that at the time of the taking the culture was under crop.

Issue joined.

## II.

Avowry where the place that should have been fallow and a common was under crop. A similar case in Michaelmas Term of the fourteenth year, (in a writ) of trespass.

Avowry was made in (the) several for damage feasant.

*Scrope.* At the time of the taking our common appurtenant etc.

*Denom.* When the place lies fallow it is his common but at that time it was under crop.

*Scrope.* At that time our common. Ready.

*Denom.* Since we grant you common at one time but not at (the) other time, you shall not get to such a general averment, without answering us.

And he was ousted of the averment by BEREฟอร์ด C.J.

*Scrope.* That place forms parcel of a field which was fallow at that time and albeit that he had sown one parcel by sufferance of the neighbours that should not oust us of our common.

Afterwards *Scrope* tendered the averment that the place was fallow at the time of the taking.

Issue joined.

And thus to the country.

## Notes from the Record.

### I.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 196 recto. Oxfordshire.  
Written by Luding'.

Robert of Craunford<sup>1</sup> in mercy for several defaults.

The same Robert was summoned to answer George Giffard<sup>2</sup> in a plea

<sup>1</sup> Robert of Craunford was granted letters of protection in 1322 (*Cal. Pat.* 1321-4, p. 80). He died before November 6, 1339 (*Cal. inq. p.m.* viii, No. 222).

<sup>2</sup> George Giffard was apparently a brother of John Giffard of Hellidon, co. Northants (*Cal. Close* 1307-13, p. 548), and probably a son of the



Notes from the Record—*continued*.

placito quare ipse simul (*sic*) Nicholao de Craunford cepit aueria ipsius Georgii et ea iniuste detinuit contra vad(ium) et pleg(ios) etc. Et vnde Idem Georgius per attornatum suum dicit quod predictus Robertus simul etc. die martis proxima post festum sancte Trinitatis anno regni domini Regis nunc quarto in villa de Newetone Iuel in quodam loco qui vocatur paruum Wyke cepit vnum taurum duos boues et nouem vaccas et eos iniuste detinuit contra vadium etc. quousque etc. vnde dicit quod deterioratus est et dampnum habet ad valenciam decem librarum Et inde producit sectam etc.

Et Robertus venit Et defendit vim et Iniuriam qu(ando) etc. Et bene aduocat predictam capcionem et iuste etc. Dicit enim quod ipse predictis die et anno inuenit predicta aueria in predicto loco qui est quoddam pratum suum falcabile herbam suam depascencia et conculcancia, et ea ibi in dampno suo cepit et imparcauit sicut ei bene lieuit etc.

Et Georgius dicit quod predictus Robertus capcionem illam iustam aduocare non potest in hac parte, Dicit enim quod predictus locus in quo etc. est communis pasture ipsius Georgii <sup>1</sup>pertinens ad liberum tenementum suum in eadem villa<sup>1</sup> singulis annis quibus contigerit campum predictae ville versus austrum iacere Warettum etc. Et dicit quod campus ille predicto anno fuit Warettus et disseminatus. Et hoc paratus est verificare etc. Et petit iudicium etc.

Et Robertus dicit quod infra campum predictum est quedam cultura abuttans super predictum pratum ex parte Australi que quidem cultura est ipsius Roberti et aliorum tenencium ville predictae. Et dicit quod cum contigerit predictam culturam iacere Warettam et disseminatam, bene licebit predicto Georgio <sup>1</sup>in predicto prato<sup>1</sup> communicare etc. Ita tamen quod quando eadem Cultura seminata fuerit: idem Robertus tenebit illud idem pratum in separalitate, absque hoc quod predictus Georgius vel aliquis alius eo tempore ibidem communicare debeat. Et dicit quod ipse et antecessores sui semper hucusque tenuerunt predictum pratum itaque in separalitate <sup>1</sup>ratione culture predictae que quidem cultura predictis die et anno fuit seminata<sup>1</sup> Et de hoc ponit se super patriam.

Et predictus Georgius similiter Ideo preceptum est vicecomiti quod venire faciat hic a die Pasche in xv dies xii etc. per quos etc. Et qui nec etc. Quia tam etc.

## II.

(*Ibidem*.)

On the same membrane is a very similar record of a case, in which the same Robert was defendant against the same plaintiff, because he, Robert, had taken, together with one Adam, his bailiff (simul cum Adam balliuo eiusdem Roberti) in the same place, on the Friday next following the feast of Trinity in the fourth year of Edward II (die veneris proxima post festum sancte Trinitatis anno regni domini Regis nunc quarto) one bull, two oxen, and nine cows. All the other details, including the pleadings, are practically identical with those in the record set out above, except that Robert came by his attorney, and that the place is called Newentone Iuel.

<sup>1-1</sup> Interlined.

Notes from the Record—*continued*.

why he together with Nicolas of Craunford took beasts of the said George and unjustly detained them against gage and pledges etc. And concerning this matter the said George by his attorney says that the said Robert together etc. on (June 1, 1311) the Tuesday next following the feast of Holy Trinity in the fourth year of the reign of our Lord the present King in the vill of Newington Iuel<sup>1</sup> in a certain place which is called Little Wyke took one bull, two oxen, and nine cows, and unjustly detained them against gage etc. until etc. whereby he says that he has suffered loss and has damage to the amount of £10. And as to this he produces suit etc.

And Robert comes, and denies force and wrong when etc. And he fully avows the said taking and justly etc. For he says that on the said day and in the said year he found the said beasts in the said place, which is a mowable meadow of his, eating and treading his grass, and there in his damage he took and imparked them, as well he might etc.

And George says that the said Robert cannot avow that taking as just in this respect. For he says that the said place in which etc. is a common pasture of the said George belonging to his freehold in the said vill in each year when the field of the said vill toward the south should happen to lie fallow etc. And he says that that field was in the said year fallow and unsown. And this he is ready to aver etc. And he prays judgment etc.

And Robert says that within the said field there is a certain culture adjoining the said meadow from the south, and that culture belongs to the said Robert and to other tenants of the said vill. And he says that whenever it happens that the said culture lies fallow and unsown, the said George may well be allowed to common in the said meadow etc., but in this way, that when that same culture will have been sown, the said Robert will hold that same meadow in severalty, and neither the said George nor anybody else should at that time common there. And he says that he and his ancestors have hitherto always held the said meadow in this way in severalty by reason of the said culture, and that culture was sown on the said day and in the said year. And as to this he puts himself upon the country.

And the said George likewise. Therefore the sheriff was ordered that he cause to come here on the quindene of Easter twelve etc. by whom etc. And who are neither etc. Because both etc.

Sir John Giffard who was present with Robert of Craunford at Kidlington to prove the age of Hugh de Plecy in 1317 (*Cal. inq. p.m.* vi, No. 124).

<sup>1</sup> South Newington in the Hundred of Wootton, where Robert of Craunford, father of the defendant, had held two manors each as half a fee, at the time of his death in 1302 (*Cal. inq. p.m.* iv, No. 113). One of these was held in chief of the King as of the Honour of

Albemarle, and the other of John de Grey, who held of the King (*ibid.*; *Feudal Aids*, iv, 155). The younger Robert was in possession of both till his death in 1339, when both seem to have been held directly of the Crown (*Cal. inq. p.m.* viii, No. 222. The *Calendar* gives the 'Count of Aumale' as lord, but the Earldom was at this time in the Crown).



28. THE PRIOR OF MAIDEN BRADLEY *v.* WASPRE.<sup>1</sup>I.<sup>2</sup>*Replegiare.*

Raufe le Wafrer porta vn *replegiare* vers vn prior et dist qe a tort prist cez auers nomement etc.

*Denum.* Nous auowoms la prise bone et renable et par la reson qe mesme cesti Raufe tent de nous teuz (*sic*) tenemenz par homage fealte et par escuage nomement etc. et par les seruices de .iiij. soutz par an pur touz seruices. des quex seruices vn A. son predecessour fu seisi parmy la meyn mesme cesti R. com parmy etc. et pour le homage arer si<sup>3</sup> auowoms la prise en droit de vn beof et pur la fealte et les .iiij. soutz arer. si auowoms. la. prise en droit del altre beof.

*Stanore.* Nous vous dioms qe nous tenoms de luy par fealte et par les seruices de .iiij. soutz par an. pur touz seruices et en droit del homage son predecessour ne fu. vnke seisi etc. et en droit de la fealte vous dioms qe nous luy tend(ismes) la fealte auaunt le iour de la prise en presence de bone gent(e) et il. la. refusa. par qey il nous ad destr(eint) a tort. iugement et prioms nos damages.

*Denum.* Vostre r(esp)onse est insufficiente qe vous dites qe vous nous tend(istes) la fealte et ne dites pas qe vous estes prest(e) ore de faire la fealte la ou tenant deit touz iours estre prest a faire les seruices a son seigneur qe dues luy s(un)t iugement et prioms retour saunz ceo qil voile la fealte tendre.

*Stan.* Nous sumus si par attorne en quel cas nous ne poms la fealte tendre. ne faire. et la. ou le tenant tend(ist) cez seruices a son seigneur. et il ne les veot reseiore et pur mesme les seruices luy destr(eint) la destr(esce) est torcenouse qe nule def(aute) ne remeynt en luy pur quele destr(esce) torcenouse nous sumus si a recouerer damages et demandoms iugement.

*Denum.* Mes. qil. nous tendist la fealte auaunt la destr(esce) qe nous ne conisoms pas. cel tendr(e) ne nous forclot pas qe nous ne deuoms la fealte auoir. et desicome la fealte est arer et il ne le tend pas. demandoms iugement et prioms retour: qe mes qil nous tend la fealte ore si poet il auoir lauerr(ement) qil nous tendist la fealte auaunt la destr(esce) pur cez dam(ages) recouerer.

*Ber.* Il vous dit qil vous tendist les seruices auaunt la destr(esce). pur quex seruices vous faites auowerie par qey vostre destr(esce) fu

<sup>1</sup> Reported by *B, E, F, M, P, X*. This is Vulg. 17.      <sup>2</sup> From *E*.      <sup>3</sup> Interlined.

28. THE PRIOR OF MAIDEN BRADLEY *v.* WASPRE.

## I.

## Replevin.

Ralph Waspre<sup>1</sup> brought a *replegiare* against a prior and said that he had wrongfully taken his beasts, namely etc.

*Denom.* We avow the taking good and reasonable and (this) for the reason that the said Ralph holds of us such tenements by homage fealty and by escuage, namely etc., and by the services of 4s. a year for all services, of which services one A. his<sup>2</sup> predecessor was seised by the hand of the said Ralph as by etc. And for the homage in arrear we avow the rightful taking of one ox, and for the fealty and the 4s. in arrear we avow the rightful taking of the other ox.

*Stonore.* We tell you that we hold of him by fealty and by the services of 4s. a year for all services, and as to the homage (we say that) his predecessor was never seised etc., and as to the fealty we tell you that we tendered him the fealty before the day of the taking in the presence of good men, and he refused it. Therefore he has distrained us wrongfully. Judgment, and we pray our damages.

*Denom.* Your answer is insufficient, for you say that you tendered us the fealty and you do not say that you are ready now to do the fealty, whereas a tenant ought at all times to be ready to do to his lord the services which are due to him. Judgment, and we pray return, <sup>3</sup>(as) he is not<sup>3</sup> willing to tender the fealty.

*Stonore.* We are here by attorney and in that case we cannot either tender or do fealty. And where the tenant has tendered his services to his lord, and the lord would not receive them and distrains him for the (very) same services, the distress is wrongful, for no default remains in the tenant. And for that wrongful distress we are here to recover damages. And we demand judgment.

*Denom.* Even if he had tendered us the fealty before the distress (which we do not admit), such tendering would not prevent us from having the fealty. And since the fealty is in arrear and he does not tender it, we pray judgment and we pray return. For even if he tenders us the fealty now, he can, in order to recover his damages, have the averment that he tendered us the fealty before the distress.

BEREFORD C.J. He tells you that he tendered you the services before the distress, and (now) you make avowry for the same services.

<sup>1</sup> Observe the confusion of plaintiff and defendant.

<sup>2</sup> *I.e.* the defendant's.

<sup>3-3</sup> *Or* : and he has not been.



faite countre lei de terre et nemye de ley auowable par qey il couent  
 qe vous r(espondiez) a luy le qel il lad tendu ou nemye.

*Denum.* Ou et qant et deuaunt qy.

*Stan.* A. B. vn an auaunt la prise en presence A. B. et C. etc.

*Denum.* Il. yauoit debat entre nous. des autres seruices. issi. qe vous  
 deistes qe vous nous vodriez faire fealte a yceles qe nous vous vodrioms  
 releser les autres seruices. et autrement nemye et en altre manere ne la  
 tendist vous prest etc.

*Et alii contra.*

## II.<sup>1</sup>

<sup>2</sup> *Replegiare* ou il avoua pur fealte et autres seruices et le plaintiff  
 dit qe auant la prise et pus il ly tendy sa fealte et vnqore fet iugement  
 etc. Le defendant dit qe ily tendy sur condicioun qil ly relesereit autres  
 seruices le plaintiff dit qe il ly tendy saunz condicioun prest etc. et alii  
 contra.<sup>2</sup>

Le Priour de Marbradeleighe<sup>3</sup> se plaint qe Robert<sup>4</sup> de Wapre<sup>5</sup> atort  
 prist ses auers scilicet iii cheuaux.

*Den.* R. auowe etc. par la reson qe le Priour tient de ly etc. par  
 homage feaute et escuage et par les seruices de iiij sous par an des quex  
 seruices il feut seisi par my la mayn Iohan predecessour etc. com par  
 my etc.<sup>6</sup> et pur lomage cesti Priour arrere il auewe la prise de ij.  
 cheuiauz<sup>7</sup> et pur feaute etc. de vn cheual.

*Scrop.*<sup>8</sup> Nous vous dioms qe nous tenoms de ly etc. par feaute et  
 par les seruices de iiij. sous par an pur touz seruices et qant a la feaute  
 nous dioms qe nous tendimes auant la prise <sup>9</sup>en la prise<sup>9</sup> et puis la prise  
 et demandoms iugement si pur la feaute peusse il auower.

*Den.* Qei respondez vous a la demande des autres seruices.

*Scot.*<sup>10</sup> Nous tenoms par les seruices auaunt ditz et des autres  
 seruices vnqe seisi prest etc.

*Den.* Seisi prest etc. et qant a la feaute depuis qe vous ne dites  
 mye qe vous estes vnqore prest de la faire etc. et vous auetz conu qele  
 est arrere iugement et prioms return en droit dun cheual.

<sup>1</sup> From *M.* Compared with *B.* *F.* Headnote from *B.* <sup>2-2</sup> The headnote  
 in *F.* is: *Replegiare* ou Lavowerie fut fete pur fealte et pur homage et le pleyntif  
 la seisine dil homage trauersa et dit qil auoyt tendu la fealte. et le auowant le granta  
 mes il dit qe ce fut par condicioun a relesser les autres seruices *et aliter non.* <sup>3</sup> Mar  
 Bradeley *B.* Maydene Bradeleye *F.* <sup>4</sup> Raufe *F.* <sup>5</sup> Waspre *F.* <sup>6</sup> la main  
 sun verrey tenant *F.* <sup>7</sup> chiuais *B.* *F.* <sup>8</sup> Stonore *F.* <sup>9-9</sup> *Om. F.* <sup>10</sup> Scotre *B.*  
 Stonore *F.*

Therefore your distress was made against the law of the land and is not avowable by law. Therefore you must answer him whether he has tendered it or no.

*Denom.* Where and when and before whom?

*Stonore.* At B, a year before the taking, in the presence of A, B, and C, etc.

*Denom.* There was between us a dispute as to the other services, so that you said that you would do fealty to us, on condition that we would release to you the other services, and not otherwise. And he did not tender it to us otherwise. Ready etc.

Issue joined.

## II.

Replevin, where he avowed for fealty and other services, and the plaintiff said that before and after the taking he had tendered him the fealty and still does. Judgment etc. The defendant said that he tendered (it) him on condition that he would release him from other services. The plaintiff said that he tendered him without condition, ready etc. Issue joined.

The Prior of Maiden Bradley<sup>1</sup> complains that Ralph Waspre<sup>2</sup> wrongfully took his beasts, to wit, three horses.

*Denom.* Ralph avows etc. by reason that the prior holds of him etc. by homage fealty and escuage and by the services of 4s. a year, of which services he was seised by the hand of John, predecessor etc., as by etc. And for the homage of the said prior in arrear he avows the taking of two horses, and for fealty etc. of one horse.

*Scope.* We tell you that we hold of him etc. by fealty and by the services of 4s. a year for all services, and as to the fealty we say that we tendered (it) before the taking, at the time of the taking, and since the taking, and we demand judgment whether he can avow for the fealty.

*Denom.* What do you answer to the demand of the other services?

*Scope* (?). We hold by the services mentioned before and of the other services (he has) never (been) seised. Ready etc.

*Denom.* Seised. Ready etc. And as to the fealty, since you do not say that you are still ready to do it etc., and since you have confessed that it is in arrear, judgment etc. And we pray return as regards one horse.

<sup>1</sup> There is no list of the priors of Maiden Bradley in Dugdale's *Monasticon*, vi, 643.

letters to the sheriff that he had satisfied Hugh Despenser for certain trespasses (*Cal. Close* 1302-7, p. 293).

<sup>2</sup> In 1305 Ralph Waspray had



*Heruy.* Mesqe il feut prest etc. R. est<sup>1</sup> par atturme.<sup>2</sup>

*Scot.*<sup>3</sup> Depuis qe nous auoms tendu la feaute et vous lauez refuse cest vostre defaute qele nest pas fait par qei etc.

*Heruy a Den.* Vous ad il tendu feaute ou ne mye.

*Den.*<sup>4</sup> Il nous s(e)mle qe nous nauoms mye mest(ier) a respondre a ceo<sup>5</sup> mesqe il nous eust tendu vne foitz qant nous feumes pas auisez a receuere et mesqe nous leussoms receu<sup>6</sup> par taunt ne serrioms pas barre etc. de puis qil ne dit<sup>7</sup> mye qil est prest etc.

*Berr.* Il vous dit qil vous tendit deuant<sup>8</sup> la destr(esce) et puis la destr(esce) et touz iours feut prest qel reson auez vous donques a destr(aindre).

*Den. vt prius.*

*Berr.* Conissez donques qil vous ad tendu com il ad dit et demuretz en iugement<sup>9</sup> au peril qe appent qe vous nauerez autre (*sic*).

*Denom.* Nous grauntoms bien qil nous tendist la feaute autiel qe nous deussoms relessier le homage et touz les autres seruices estre les iiij. s. et autrement ne mye.

*Scrop.*<sup>10</sup> Et depuis qe vous auietz conu iugement<sup>11</sup> et prioms<sup>11</sup> nos damages qe depuis qe nous tendismes la prise feut torcenouse apres le tendre.

*Berr.* Il vous graunte le tendre mes ne mye com vous dites etc. einz sur condicion.

*Scrop.*<sup>10</sup> Depuis qil ad conu le tendre il nad<sup>12</sup> mye t(ri)e<sup>13</sup> le condicion<sup>14</sup> le quel il feut<sup>15</sup> simpl(e) ou condicional.<sup>15</sup>

*Berr.* <sup>16</sup>Tendit il la feaute sur la condicion<sup>16</sup> ou ne mye.

*Scrop.* Simpl(ement) saunz condicion prest etc.

*Et alii econtra.*

### III.<sup>17</sup>

Auowerie<sup>18</sup> por felte tendre aleg(e) al tens de la prise sanz tendre ore all(ege) a prouer destr(esce) tort(enouse).<sup>18</sup>

Le priour de Mard' porta *Replegiare* vers Richard de Warpre qe auowa sur le p(ur)s(ur) pur ceo qil tient de luy par homage feute et escuage et par les seruices de iiij. s. par an et lya seisine par un la meyn

<sup>1</sup> *Add*: la *F*.      <sup>2</sup> Here *F* *adds*: *Denom*: Le atorne pust resceyuere la feaute etc. et de pus qil ad conu la feaute estre arere et il nest pas prest etc. iugement etc.—nota qe le priour fut par atorne.      <sup>3</sup> *Scotre B*. *Stonore F*.  
<sup>4</sup> *Om. F*.      <sup>5</sup> *Add*: qar *F*.      <sup>6</sup> *refuse F*.      <sup>7</sup> See note 2, p. 108.      <sup>8</sup> *dedeinz F*.  
<sup>9</sup> *Add*: ou demorrez *F*.      <sup>10</sup> *Stonore F*.      <sup>11-11</sup> *vt prius (sic) B*.      <sup>12</sup> *ne fet F*.  
<sup>13</sup> *a trier F*.      <sup>14</sup> *Add*: scilicet *B, F*.      <sup>15-15</sup> *fete simplement ou condicionallement F*.      <sup>16-16</sup> *tendites vous la feaute F*.      <sup>17</sup> *From X*.      <sup>18-18</sup> *Added in later ink and in what seems a different handwriting*.

STANTON J. Even if he were ready etc., Ralph is (here) by (his) attorney:

*Scrope* (?) Since we have tendered the fealty and you have refused it, it is (through) your fault that it has not been done, wherefore etc.

STANTON J. to *Denom.* Has he tendered fealty to you, yes or no?

*Denom.* It seems to us that we need not answer to this, for<sup>1</sup> albeit that he had tendered (it) to us once when we were not advised to receive it, and even if we had received it, we would not thereby be barred etc., since he does not say that he is ready etc.

BEREFORD C.J. He tells you that he tendered to you before the distress and since the distress, and (that) at all times he has been ready. What reason have you, then, to distrain?

*Denom.* (as before).

BEREFORD C.J. Do you confess, then, that he tendered to you as he has said, and do you abide judgment at the risk which is connected with it? For you shall not have another.<sup>2</sup>

*Denom.* We fully grant that he tendered us the fealty in such form that we should release the homage and all the other services except the 4s., and (he has) not (tendered them) otherwise.

*Scrope.* And since you have confessed, judgment. And we pray our damages. For since we have tendered (the fealty), the taking was wrongful after the tendering.

BEREFORD C.J. He has granted you the tendering, yet not as you say etc., but on condition.

*Scrope.* Since he has acknowledged the tendering he has not <sup>3</sup>to try<sup>3</sup> the condition, whether it<sup>4</sup> was simple or conditional.

BEREFORD C.J. Did he tender the fealty on condition or no?

*Scrope.* Simply without condition. Ready etc.

Issue joined.

### III.

Avowry for fealty. In order to prove that the distress was wrongful, it was alleged that (fealty) had been tendered at the time of the taking, but it was not tendered at the time of the trial.

The prior of Maiden Bradley brought a *replegiare* against Ralph Waspre who avowed against the plaintiff, because the latter held of him by homage fealty and escuage and by the services of 4s. a year. and he alleged the seisin by the hand of one,<sup>5</sup> predecessor, and avowed

<sup>1</sup> Supplied from *F.*

<sup>2</sup> *I.e.* another judgment. if this point is decided against him.

<sup>3-3</sup> *I.e.* to bring before the court.

<sup>4</sup> *I.e.* the tendering.

<sup>5</sup> *la meyn* is probably a confusion of *par la meyn de* (by the hand of) with the name of the predecessor.



predecessour et auowa pur homage la prise de ij. bestes et pur feaute la prise dune beste.

*Scrop.* Nous tenoms de luy par feaute et par les seruices de iiij. s. par an pur touz seruices et qaunt as autres seruices vnqes seisi.

*Et alii econtra.*

*Scrop.* Qaunt a la feute nous la tendismes a vous deuant la prise et en la prise et peus Iugement si vous peusez auower.

*Denh.* De peus qil conust la fealte estre dewe son response nest pas pley n saunz dire qe il est prest de fere la fealte ore.

*Berford.* Si est a prouer la destr(esce) torcenouse par qey responez a ceo.

*Denh.* Il nous tendi la feaute et les iiij. s. a tiels qe nous vodroms relessier les autres seruices et ne mie autrement.

*Scrop.* Nous la tendimes simplement saunz condicioun prest etc.

*Et alii econtra.*

#### IV.<sup>1</sup>

*Replegiare* ou lauoir(ie) fut fete pur fealte et le tenant dist qil auoit tendu la fealte en pais en precence etc.

Lepriour de Maidenebradeleie fuit attache a respondre a Roger Waspre pur quei atort auoit pris ces auers.

*Denoun* auoa pur fealte arrere etc.

*Stonore.* Nous uous auoms tendu souent la fealte en la precence A B C etc. deuaunt la price et puis la price prest etc. vous la fusatus iugement de la torsinouce price.

*Denoun.* Vous auez conu. la fealte et uous nestes pas ore prest a fere la qar vous estes par attorne et latorne ne deit fere feaute iugement de vostre reconisaunee, et prioms return etc.

*Berr.* Il dist qil uous tendi la feaute en pais en presence de bone genz. et quel destr(esce) qe vous puis sur ly pur mesme la fealte.<sup>2</sup> si fuit ele torsinouce. et pur ceo respandez sil uous tendi la fealte ou noun auxi com il ad dist.

Sire<sup>3</sup> ne pount estre dedist quil nous tendi la feaute mes sur vne condicioun com nous vous dirroms si nous vousisoms relessier et quitecl(a)mer tot le dreit qi nous auions en autre seruice.

<sup>1</sup> From *P.*    <sup>2</sup> *Suppl.* fistes.    <sup>3</sup> The name is omitted and the statement appears as a continuation of Berford's statement.

for homage the taking of two beasts and for fealty the taking of one beast.

*Scrope.* We hold of him by fealty and by the services of 4s. a year for all services, and as to the other services never seised.

Issue joined.

*Scrope.* As to the fealty we tendered it to you before the taking and at the time of the taking and since. Judgment whether you can avow.

*Denom.* Since he has confessed that the fealty is due, his answer is not full if he does not say that he is ready to do the fealty now.

BEREFORD C.J. It is (full enough) to prove (that) the distress (was) wrongful. Therefore answer to this.

*Denom.* He tendered us the fealty and the 4s. so that we would release the other services, and not otherwise.

*Scrope.* We tendered it simply without condition. Ready etc.

Issue joined.

#### IV.

Replevin, where the avowry was made for fealty, and the tenant said that he had tendered the fealty in the country in the presence etc.

The prior of Maiden Bradley was attached to answer Ralph Waspre<sup>1</sup> why he wrongfully took his beasts.

*Denom* avowed for fealty in arrear etc.

*Stonore.* We have often tendered you the fealty in the presence of A, B, C, etc., before the taking and since the taking. Ready etc. You refused it. Judgment of the wrongful taking.

*Denom.* You have confessed the fealty and you are not ready now to do it, for you are (here) by attorney and the attorney must not do fealty. Judgment of your conusance, and we pray return etc.

BEREFORD C.J. He says that he tendered you the fealty in the country in the presence of good men. And whatever distress you made upon him afterwards for the same fealty, it was wrongful. And therefore answer whether or no he did, as he has said, tender you the fealty.

(*Denom.*) Sir, it cannot be denied that he tendered us the fealty, but (he did so) on one condition which we will tell you. If we would release and quitclaim all the right we had in other service(s) which he

<sup>1</sup> Observe the confusion of plaintiff and defendant. Dugdale gives a charter of Henry III confirming to the Priory of Maiden Bradley the tenement in Bayleclive granted them by Jordan Bolebek (*Monasticon*, vi, p. 644). By

1428 the Priory had acquired the land formerly held of John Waspray, and held it immediately from the heirs of Robert Columbers (*Feudal Aids*, v, 258). It was among their possessions at the Dissolution (*Dugdale*, *op. cit.* vi, 645).



quil nous dust fere il fret la feaute et qe autrement ne la tendi prest etc.

*Stonore.* Qe nous la tendisoms simplement saunz nulle condicioun prest etc.

*Et sic.*<sup>1</sup>

#### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 296 recto. Wiltshire.  
Written by Luding'.

Magister Radulphus de vasto prato et Alex(ander) seruiens eiusdem Radulphi summoniti fuerunt ad respondendum Priori de Maydenbradeleghe de placito quare ceperunt aueria ipsius Prioris et ea iniuste detinuerunt contra vad(ium) et pleg(ios) etc. Et vnde Idem Prior per attornatum suum dicit quod predicti Magister Radulphus et Alex(ander) die Lune proxima post festum assumptionis beate Marie anno regni domini Regis nunc quinto in villa de Bayllecluye in quodam loco qui vocatur Frerencrost ceperunt tres equos ipsius Prioris et eos iniuste detinuerunt contra vad(ium) etc. quousque etc. vnde dicit quod deterioratus est et dampnum habet ad valenciam decem librarum Et inde producit sectam etc.

Et Magister Radulphus et Alex(ander) per attornatum suum veniunt Et idem Magister Radulphus respond(et) pro se et predicto Alex(andro) Et defendit vim et Iniuriam qu(ando) etc. Et bene aduocat predictam capcionem et iuste etc. Dicit enim quod predictus Prior tenet de eo vnum mesuagium et vnam virgatam terre cum pertinenciis in predicta villa per homagium fidelitatem et per seruicium quatuor solidorum et faciendi sectam ad Curiam ipsius Magistri Radulphi de Bayllecliue de tribus septimanis in tres septimanas, Et ad scutagium domini Regis quadraginta solidorum cum acciderit duos solidos Et ad plus, plus et ad minus minus, De quibus seruiciis idem Magister Radulphus fuit seisis per manus cuiusdam Iohannis quondam Prioris de Maydenbradeleghe predecessoris etc Et quia homagium et fidelitas istius Prioris nunc ei aretro fuerunt die capcionis predictae cepit ipse duos equos pro homagio etc. et vnum equum pro predicta fidelitate etc. in predicto loco qui est parcella predictorum tenementorum etc.

Et Prior dicit quod predictus Magister Radulphus capcionem illam iustam aduocare non potest in hac parte etc. Dicit enim quod ipse tenet predicta tenementa de predicto Magistro Radulpho per fidelitatem et seruic(ium) quatuor solidorum per annum pro omni seruicio, et quo ad homagium et residuum seruiciorum etc. : bene defendit quod predictus Magister Radulphus non fuit seisis per manus predicti Iohannis quondam Prioris predecessoris etc. de eisdem seruiciis sicut idem Magister Radulphus aduocat Et de hoc ponit se super patriam.

Et Magister Radulphus similiter etc.

Et quo ad fidelitatem pro qua aduocat capcionem predicti equi etc. dicit quod idem Magister Radulphus iniuste aduocat etc. Dicit enim quod ipse

<sup>1</sup> *Suppl.* ad patriam.

owed us, then he would do the fealty. And ready etc. that he did not tender it otherwise.

*Stonore.* Ready etc. that we tendered it simply without any condition.

And thus (to the country).

#### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 296 recto. Wiltshire.  
Written by Luding'.

Master Ralph Waspre and Alexander, servant of the said Ralph, were summoned to answer the Prior of Maiden Bradley in a plea why they took beasts of the said Prior and unjustly detained them against gage and pledges etc. And concerning this matter the said Prior by his attorney says that the said Master Ralph and Alexander on (August 16, 1311) the Monday next following the feast of Assumption of Blessed Mary in the fifth year of the reign of our Lord the present King, in the vill of Bayllecliyue,<sup>1</sup> in a certain place which is called Frerencrost, took three horses of the said Prior and unjustly detained them against gage etc. until etc. whereby he says that he has suffered loss and has damage to the amount of £10. And as to this he produces suit etc.

And Master Ralph and Alexander come by their attorney, and the said Master Ralph answers for himself and for the said Alexander and denies force and wrong when etc. And he fully avows the said taking and justly etc. For he says that the said Prior holds of him one messuage and one virgate of land with the appurtenances in the said vill, by homage fealty and by the service of 4s. and of making suit at the court of the said Master Ralph of Bayllecliue from three weeks to three weeks, and (payment of) a scutage to our Lord the King of 2s. when it should be 40s. and more when more and less when less, and of those services the said Ralph was seised by the hands of one John sometime Prior of Maiden Bradley, predecessor etc. And because the homage and fealty of this present Prior were in arrear on the day of the said taking, he took two horses for the homage etc. and one horse for the said fealty etc. in the said place which is a parcel of the said tenements etc.

And the Prior says that the said Master Ralph cannot avow that taking just in this respect etc. For he says that he holds the said tenements of the said Master Ralph by fealty and the service of 4s. a year for all service, and as to the homage and the rest of the services etc. he entirely denies that the said Master Ralph was (ever) seised of the said services by the hands of the said John, sometime Prior, predecessor etc., as the said Master Ralph does avow. And as to this he puts himself upon the country.

And Master Ralph likewise etc.

And as to the fealty for which (Master Ralph) avows the taking of the said horse etc., (the Prior) says that the said Master Ralph unjustly avows

<sup>1</sup> Baycliff near Horningham in Heytesbury Hundred.



## Note from the Record—continued.

predicto die Lune post festum assumptionis, quo die queritur et diu antea apud Maydenbradeleghe in presencia Willelmi de Suctone et Iohannis de Horsingtone de comitatu predicto et aliorum etc. optulit ei predictam fidelitatem, quam idem Magister Radulphus admittere recusavit, unde petit iudicium etc.

Et Magister Radulphus dicit reuera quod predictus Prior voluit fecisse ei quandam fidelitatem sub tali condicione, videlicet, quod idem Magister Radulphus remitteret ei omnia alia seruicia supradicta, preter seruic(ium) predictorum quatuor solidorum etc. nec alio modo optulit ei aliquam fidelitatem etc. Et hoc paratus est verificare etc.

Et Prior dicit quod ipse optulit ei predictis die et anno predictam fidelitatem suam pro predicto seruicio quatuor solidorum simpliciter et absque aliqua huiusmodi condicione etc. Et de hoc ponit se super patriam.

Et Magister Radulphus similiter.

Ideo preceptum est vicecomiti quod venire faciat hic a die sancti Hillarii in xv dies predictos Willelmum et Iohannem in quorum presencia etc. Et preter illos xii etc. per quos etc. Et qui nec etc. Quia tam etc.

Ad quem diem vicecomes non misit breue etc. Ideo sicut prius preceptum est vicecomiti quod venire faciat hic a die sancte Trinitatis in xv (sic) xii etc. per quos etc. quia tam etc.

29. (CLEMENT v. THE ABBOT OF LILLESALL AND SHERTONE,  
(GAMEL v. THE ABBOT OF LILLESALL AND SHERTONE.<sup>1</sup>

I.<sup>2</sup>

<sup>3</sup>*Replegiare* ou il clamerent commune com apendant a Burgage et pus le trauers fust receu. nient seisi com apendant prest etc. *et alii econtra.*<sup>3</sup>

Les Bourg(eois) de Salesbury<sup>4</sup> porterent lour *replegiare* vers Labbe de B.<sup>5</sup> de lour auers pris en <sup>6</sup>portmaune lesne.<sup>6</sup>

<sup>7</sup>*Scrop* pur<sup>7</sup> labbe auowa la prise <sup>8</sup>et dit qe cel lieu <sup>9</sup>quest appelle<sup>9</sup> P. est appelle Dereford<sup>10</sup> et illeokes auowa par la reson qe Dereford<sup>10</sup> et Buslewe<sup>11</sup> et salisb(ury)<sup>12</sup> ne sentrecommunt pas et labbe est seignur de la ville de B.<sup>13</sup> et<sup>8</sup> pur ceo qil troua le bestes<sup>14</sup> cochauntz et

<sup>1</sup> Reported by *B, C, F, G, M, P, T.* This is Vulg. 20. <sup>2</sup> From *M.* Compared with *B, F, G.* Headnote from *B.* <sup>3-3</sup> The headnote in *F* is: *Replegiare.* Lavowerie fete pur damage fesant ou les pleyntifs diseient qil furent Burgeys et clamerent ilukes comune apendant alur Burgages. Et fut dit qe en tiel cas ne git pas La amesurement. The headnote in *G* is:—*Replegiare* ben plede. <sup>4</sup> Saleb's *F.* Saloburs *G.* <sup>5</sup> Bailleshulle *B.* Lullushulle *F.* Lulleshulle *G.* <sup>6-6</sup> Portmanneslesne *B.* Portmoneslesne *F.* Portmannislese *G.* <sup>7-7</sup> Pus *B.* <sup>8-8</sup> en mesme le lu qest apele Diriford, qest en la vile de Wricheleuwe. et par la reson qe Wricheleuwe et Saluburs ne se entrecommunt poynt et labbe est seignur de la vile de Wricheleuwe et *G.* <sup>9-9</sup> qil appellant *F.* <sup>10</sup> Direford *F.* <sup>11</sup> Wrykleu *B.* Wrikelewe *F.* <sup>12</sup> Salesbury *B.* Salob's *F.* <sup>13</sup> Wrykeleu *B.* Wrykelewe *F.* <sup>14</sup> *Add:* qe sunt *G.*

**Note from the Record**—*continued.*

etc. For he says that on the said Monday after the feast of the Assumption, on which day he complains (that the taking took place) and long before, at Maiden Bradley, in the presence of William of Suctone and John of Horsington from the said county and of others etc., he offered him the said fealty, and the said Master Ralph refused to take it. And as to this he prays judgment etc.

And Master Ralph says indeed that the said Prior did want to do fealty to him on this condition, (to wit,) that the said Master Ralph should remit to him all the other aforesaid services, except the said service of 4s., and he did not otherwise tender him any fealty etc. And this he is ready to aver etc.

And the Prior says that he tendered him on the aforesaid day and in the aforesaid year his said fealty for the said service of 4s. simply and without any such condition etc. And as to this he puts himself upon the country.

And Master Ralph likewise.

Therefore the sheriff was commanded that he cause to come here on the quindene of St. Hilary the aforesaid William and John in whose presence etc. And apart from them twelve etc. by whom etc. and who are neither etc. Because both etc.

And on that day the sheriff did not send the writ. Therefore the sheriff was commanded *sicut prius* that he cause to come here on the quindene of Holy Trinity twelve etc. by whom etc. Because both etc.

## 29. CLEMENT *v.* THE ABBOT OF LILLESHALL AND SHERSTONE.

### I.

Replevin, where they claimed common as appendant to burgage, and afterwards the traverse was received: 'not seised as appendant, ready etc.' Issue joined.

The burgesses of Shrewsbury brought their *replegiare* against the Abbot of Lilleshall for their beasts wrongfully taken in Portmanyslesne.<sup>1</sup>

*Scrope* for the Abbot avowed the taking and said that that place which is called Portmanyslesne is called Derfolde and there he avowed by the reason that Derfolde and Albrightlee and Shrewsbury do not intercommon, and the Abbot is the lord of the vill of Albrightlee.

<sup>1</sup> Portman's Lane?



leuauntz en S. en mesme le lieu pessant et damage fessaunt issi lauowe il etc.

*Toudeby.* Pur damage fessant ne poez auowerie faire en tiel lieu qar nous vous dioms qe cest vne place iointnant a salisbury<sup>1</sup> ou nous et touz les Burgeois de la ville de S. auioms commune du temps dount memorie ne court etc.

*Berr.* Coment commune ?

*Toudeby.* Oue tote manere des bestis.

*Herle.* Si vous clamez cele commune il couient qe vous clamez commune appendant ou par esp(eciau)te et de puis qe vous ne monstrez ne lun ne lautre iugement.

*Toudeby.* La seisine nous soffit pur title.

*Scrop.* Si vous feussez en vn bref de nouele disseisine il couendroit qe vous feissetz title ou com appendant ou par esp(eciau)te. auxi par decea.

*Toudeby.* <sup>2</sup>Nest pas semblable<sup>2</sup> qen assise de nouele disseisine nous sopposser(ioms) de hors mes en ceo cas nous sumus einz et soffit de meinten(ir) nostre possession et ceo par prescripcion etc. Iugement etc.

*Herle.* De gage et issi hors.

*Toudeby.* Nous vous dioms qe touz les borgeois de la ville de S. ount este seisi de pestre et de communer en cel lieu oue tote manere des bestes du temps etc. prest etc.

*Ad alium diem*

*Laufer.* Nous clamoms cel commune com append(ant) et com append(ant) seisi. prest etc.

*Herle.* A qei append(ant) ?

*Berr.* <sup>3</sup>Il dit qil est seisi com a lour Burgage.<sup>3</sup>

*Herle.* De commune ley de terre commune ne peut mye estre appendant a Burg(age) qar Burgage nest rien si noun mees en <sup>4</sup>ville de Burgh.<sup>4</sup> et si commune serroit appendant coment se freit la mesur(e-ment) *quasi diceret* lamesurement <sup>5</sup>peut estre fait<sup>5</sup> en chesqun cas ou commune est appendant.

*Berr.* Vous auez commune appendant a Burgage et <sup>6</sup>issint, nauerez mye<sup>6</sup> lamesurement.

*Herle.* Nient seisi com appendant. prest etc.

<sup>7</sup>*Et sic ad patriam.*<sup>7</sup>

*Et Nota ex isto placito* qe commune peut estre appendant ou homme nauera mye lamesurement. par Berr. etc.

<sup>1</sup> Salesbury B. Salob's F. <sup>2-2</sup> non est mirum G. <sup>3-3</sup> il vous dist qil vnt este seisi cum appendant a lur burgage F. *Sim. B, G.* <sup>4-4</sup> vile Burg' F, G. <sup>5-5</sup> se deit fere G. <sup>6-6</sup> la naueret iammes lamesurement G. <sup>7-7</sup> Om. B.

And because he found the beasts staying in Shrewsbury in the same place, grazing and damage feasant, thus he avows etc.

*Toudeby.* For damage feasant you cannot avow in such a place, for we tell you that this is a place adjoining Shrewsbury where we and all the burgesses of the town of Shrewsbury have had common from a time whereof memory runs not etc.

BEREFORD C.J. What sort of common?

*Toudeby.* For all manner of beasts.

*Herle.* If you claim this common you must claim common appendant or by specialty, and since you show neither the one nor the other, judgment.

*Toudeby.* The seisin suffices us for (a) title.

*Scrope.* If you were in a writ of novel disseisin you would have to make your title either as appendant or by specialty. The same (is true) here.

*Toudeby.* The case is not a similar one, for in an assize of novel disseisin we should suppose ourselves 'out' but in this case we are 'in' and it is sufficient to maintain our possession and (to do) this by prescription etc. Judgment etc.

*Herle.* Impounded and thus (you are) 'out' (of possession).

*Toudeby.* We tell you that all the burgesses of the town of Shrewsbury have been seised of pasture and common in that place for every kind of beasts from a time etc. Ready etc.

On another day

*Laufer.* We claim this common as appendant as (we have been) seised of it as appendant. Ready etc.

*Herle.* Appendant to what?

BEREFORD C.J. He says that he is seised (of it) as (appendant) to their burgage.

*Herle.* By common law common land cannot be appendant to burgage, for burgage is nothing but a messuage in a vill (or) a borough, and if (a) common were appendant, how would the admeasurement be made? (He said this as if he implied that an admeasurement can be made in every case in which a common is appendant.)

BEREFORD C.J. You have (a) common appendant to burgage and thus you shall not have admeasurement.

*Herle.* Not seised as appendant. Ready etc.

And thus to the country.

And note from this plea that (a) common may be appendant where one shall not have admeasurement. (This was held) by BEREFORD C.J. etc.



II.<sup>1</sup><sup>2</sup>*Replegiare* pur damage fesaunt.<sup>2</sup>

Iohan Clement<sup>3</sup> <sup>4</sup>Borgeys de Salope<sup>4</sup> se pleynt qe labbe de Hillis-hille<sup>5</sup> atort prist ses auers nomement C berbys en la vile de Albristel<sup>6</sup> en vn lieu qest appelle poytmales.<sup>7</sup>

*Herle.* Coment qe vous appellet cest lieu poytmales il est appelle soutwode<sup>8</sup> et labbe dit qil est seigneur de Abbristeleye<sup>9</sup> dount <sup>10</sup>le lieu est parcele et il troua les auers le dit I.<sup>11</sup> qe furent<sup>12</sup> <sup>13</sup>cochauns et leuaunz<sup>13</sup> de Salesberi pessaunt en lieu auantdit qest son seueral etc. dount<sup>10</sup> les ij. viles ne sentrecomument poynt et issi les prist il pur damage fesaunt.

*Toud.* Nous sumes borgeys de <sup>14</sup>la vile de Salope<sup>14</sup> et nous et touz les Burgeis de la vile <sup>15</sup>de S.<sup>15</sup> vnt peu<sup>16</sup> en cele place de temps dount il nad memore prest, etc.

<sup>17</sup>*Herle.* Taunt amounte qe vous clamet commune. dites nous coment ou par apendant ou par especialte.

*Toud.* Peu et commune de temps dount il nad memore prest etc.<sup>17</sup>

*Herle.* Prescripcion de temps fet comune apendant dount poet dire com<sup>18</sup> apendant. et dites<sup>19</sup> issi et doncques respondroms asset. Et dautrepart. si <sup>20</sup>vous portasset<sup>20</sup> lassise. il vous<sup>21</sup> couendreyt dire ou<sup>19</sup> commune<sup>22</sup> apendant etc. ou par especialte. Et dautrepart <sup>23</sup>si vous puisset auer<sup>23</sup> <sup>24</sup>tiel response<sup>24</sup> saunz dire com apendant etc. nous serroms<sup>25</sup> oste de nostre<sup>19</sup> bref de amuserement.

*Lam.* Seisi com apendant a<sup>26</sup> nos Burgeys prest etc.

*Et alii econtra.*

<sup>27</sup>*Ber.* Vous auerez commune apendant a Borgagerie et vnquore nauerez pas lamesurement.<sup>27</sup>

Nota<sup>28</sup> par<sup>29</sup> *Herle* qe<sup>19</sup> dit. qe<sup>30</sup> ceo plee qe commune ne put estre apendant al mees. qe<sup>31</sup> ne put estre amesure.

<sup>1</sup> From *P.* Compared with *C* and *T.* <sup>2-2</sup> *Replegiare* ou il auowa pur damage fesant en soun seueral. lautre clam la seignorye de la ville ou il pust etc. *C.* *Om.* *T.* <sup>3</sup> *Ciment C.* <sup>4-4</sup> Interlined *P.* *Om.* *C.* *T.* <sup>5</sup> *Hillefulle C.* *Illol T.* <sup>6</sup> *B. T.* <sup>7</sup> *Pute Mauueys C.* *Pomaltesse T.* <sup>8</sup> *Southwold C.* *deneword T.* <sup>9</sup> *Arbristelle C.* *B. T.* <sup>10-10</sup> *Om.* *T.* <sup>11</sup> *Ion C.* <sup>12</sup> *vyndrent C.* <sup>13-13</sup> *Om.* *C.* interlined *P.* <sup>14-14</sup> *Salesburie T.* <sup>15-15</sup> *Om.* *C.* <sup>16</sup> *pree T.* <sup>17-17</sup> *Om.* *T.* <sup>18</sup> *ceste C.* qe cest *T.* <sup>19</sup> *Om.* *T.* <sup>20-20</sup> *vous portastes C.* *nous portoms T.* <sup>21</sup> *nous T.* <sup>22</sup> *cum C.* com *T.* <sup>23-23</sup> *Om.* *T.* <sup>24-24</sup> *title C.* ces r(esponse) *T.* <sup>25</sup> *sumes T.* <sup>26</sup> *et T.* <sup>27-27</sup> This is added later on in *P.* with a reference mark. It is omitted in *C.* *T.* <sup>28</sup> *Et nota C.* *Et T.* <sup>29</sup> *qe T.* <sup>30</sup> *en C.* *T.* <sup>31</sup> *pur ceo qe mese T.*

## II.

## Replevin for damage feasant.

John Clement, a burgess of Shrewsbury, complains that the abbot of Lilleshall wrongfully took his beasts, to wit, one hundred sheep, in the vill of Albrightlee, in a place which is called Portmanyslesne.

*Herle.* Although you call that place Portmanyslesne, it is (really) called Southwood, and the abbot says that he is lord of Albrightlee whereof that place is parcel, and he found the beasts of the said John staying at Shrewsbury, grazing in the said place which is his several etc. (and) the two villis do not intercommon, and thus he took them for damage feasant.

*Toudeby.* We are burgesses of the town of Shrewsbury and we and all the burgesses of the town of Shrewsbury have pastured in that place from a time whereof memory runs not. Ready etc.

*Herle.* It amounts to this that you claim common. Tell us how, whether (as) appendant or by specialty.

*Toudeby.* (We have) pastured and commoned from a time whereof memory runs not. Ready etc.

*Herle.* Prescription of time makes (a) common appendant. Hence you can say 'as appendant.' Therefore say so and we shall answer enough. And on the other hand if you had brought the assize you would have to say either (that it was) common appendant etc. or (that you had it) by specialty. And moreover, if you could have such an answer without saying (that you had it) as appendant etc. (then) we should be ousted of our writ of admeasurement.

*Laufer* (?). Seised as appendant to our burgage (?). Ready etc.

Issue joined.

BEREFORD C.J. You (may) have common appendant to burgage and yet you shall not have the admeasurement.

Note by *Herle* who said in this plea that common cannot be appendant to the messuage because (the messuage) cannot be admeasured.



## Notes from the Record.

## I.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 286 verso. Shropshire.  
Written by Burnedissh.

Abbas de Lyleshulle et Willelmus filius Willelmi de Shertone summoniti fuerunt ad respondendum Alano Clement de placito quare ceperunt aueria ipsius Alani et ea iniuste detinuerunt contra vadium et pleg(ios) etc. per vnum breue etc.

Iidem Abbas et Willelmus summoniti fuerunt ad respondendum eidem Alano de placito quare ceperunt aueria ipsius Alani et ea iniuste detinuerunt contra vad(ium) et pleg(ios) etc. per aliud breue Et vnde Idem Alanus per Iacobum de Podimor attornatum suum queritur quod predicti Abbas et Willelmus die Iouis in septimana Pentecost(es) anno Regni domini Regis nunc quarto, in villa de Adbrihteleye in quodam loco qui vocatur le Portmanyslesne ceperunt occies viginti bidentes ipsius Alani et eas iniuste detinuerunt contra vad(ium) et plegios Et similiter iidem Abbas et Willelmus alias eodem die Iouis in predictis villa et loco ceperunt occies viginti bidentes ipsius Alani et eas iniuste detinuerunt contra vad(ium) et plegios etc. quousque etc. vnde dicit quod deterioratus est et dampnum habet ad valenciam viginti librarum Et inde producit sectam etc.

Et Abbas et Willelmus per Willelmum de Rutone attornatum suum veniunt Et defendunt vim et iniuriam qu(ando) etc. Et Abbas respond(et) pro se et pro predicto Willelmo. Et bene aduocat predictas capciones et iuste etc. in predicto loco qui quidem locus vocatus Derfolde Dicit enim quod ipse est dominus predictę ville de Adbrihteleye Et quia Idem Abbas predictis die et anno inuenit easdem bidentes leuantes et cubantes in villa de Salop(ia) et fugatas vsque in predictam pasturam herbam suam ibidem depascentes et dampnum facientes et que quidem ville Salop(e) et Adbrihteleye non communicant adinuicem vnde pro dampno predicto cepit ipse bidentes illas sicut ei bene licuit etc.

Et Alanus dicit quod predictus Abbas predictas capciones iustas aduocare non potest in predicto loco Quia dicit quod qualitercumque predictus Abbas asserat predictas villas esse diuersas et non communicare adinuicem etc. predictus tamen locus de Portmanyslesne est quedam placea contigue adiacens ville Salop(ie) in qua Idem Alanus et omnes antecessores sui et alii tenentes burgagia et tenementa in Salop(e) que ipse modo tenet a tempore quo non extat memoria semper hucusque extiterunt in seisina communandi (*sic*)

## Notes from the Record.

## I.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 286 verso. Shropshire.  
Written by Burnedisshe.

The Abbot of Lilleshall<sup>1</sup> and William the son of William of Shertone were summoned by one writ etc. to answer Alan Clement<sup>2</sup> in a plea why they took beasts of the said Alan and unjustly detained them, against gage and pledges etc.

The same Abbot and William were summoned by another writ to answer the same Alan in a plea why they took beasts of the said Alan and unjustly detained them, against gage and pledges etc. And concerning this the said Alan complains by James of Podimor, his attorney, that the said Abbot and William, on (May 26, 1311) the Thursday in the week of Pentecost, in the fourth year of the reign of our Lord the présent King, in the vill of Albrightlee, in a certain place which is called le Portmanyslesne, took eight-score sheep of the said Alan and unjustly detained them, against gage and pledges. And that on another occasion the said Abbot and William on the same Thursday in the said vill and place did similarly take (another) eight-score sheep of the said Alan and unjustly detained them, against gage and pledges etc., until etc., whereby he says that he has suffered loss and has damage to the amount of £20. And as to this he produces suit etc.

And the Abbot and William come by William of Rutone, their attorney, and deny force and wrong when etc. And the Abbot answers for himself and for the said William. And he fully avows the said takings and justly etc., in the said place which is called Derfolde. For he says that he is lord of the said vill of Albrightlee.<sup>3</sup> And because (he) the said Abbot on the said day and in the said year found the said sheep, (which had been) driven as far as the said pasture, remaining in the vill of Shrewsbury, there eating his grass and damage feasant (and the said vill of Shrewsbury and Albrightlee do not intercommon), therefore for the said damage he took the said sheep as well he might etc.

And Alan says that the said Abbot cannot avow the said takings in the said place as just. For he says that although the said Abbot asserts that the said vill is separate (*diuersas*) and do not intercommon etc., yet the said place of Portmanyslesne is a place contiguously adjacent to the vill of Shrewsbury, in which the said Alan and all his ancestors and others holding the burgages and tenements in Shrewsbury which he holds now, have always hitherto, from a time whereof memory runs not, been in the

<sup>1</sup> John of Chetwinde (Dugdale, *Monasticon*, vi, 261).

<sup>2</sup> Alan Clement was one of those said to have taken part in an assault on the house of Isabel Borry of Shrewsbury in 1303 (*Cal. Pat.* 1301-7, pp. 198, 270). In 1312 he and other burgesses of the town were granted the King's protection (*ibid.* 1307-13, p. 487).

<sup>3</sup> Albrightlee was held by the Abbey as a member of St. Alkmund's church (Eyton, *Hist. of Shropshire*, viii, 250). Its possession was disputed for nearly eighty years by the Burnells of Acton, but the Abbey had obtained a quitclaim from them in 1273 (*ibid.* 246-50).



Notes from the Record—*continued*.

et pascendi tanquam in co(mmun)a pasture sue pertin(enti) ad burgagia et tenementa sua predicta Et hoc paratus est verificare etc.

Et Abbas dicit quod nec predictus Alanus nec aliquis antecessorum suorum seu aliqui alii predicta Burgagia et tenementa in Salop(ia) que Idem Alanus modo tenet tenentes (*sic*) vnequam fuerunt in seisina communandi (*sic*) in predicto loco tanquam pertin(enti) ad aliquod burgagium seu tenementum in Salop(ia) sicut predictus Alanus dicit Et de hoc ponit se super patriam.

Et Abbas similiter.

Ideo preceptum est vicecomiti quod venire faciat hic a die Pasche in xv dies xii etc. per quos etc. Et qui nec etc. ad recognoscendum etc. Quia tam etc.

Ad quem diem ven(erunt) partes etc. Et vicecomes non misit breue etc.

Ideo sicut prius preceptum est vicecomiti quod venire faciat hic in Octabis sancti (Michaelis) xii etc. Quia tam etc.

## II.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 301 recto. Shropshire.  
Written by Burnedishe.

This is a record of a case against the same defendants. The plaintiff is Iohannes Gamet de Salopia (*sic*) and the takings complained of were of one hundred, and not one hundred and sixty sheep (centum bidentes). All other details are the same, and the wording of the record is almost identical with that in I.

30. DENE v. DROSEY.<sup>1</sup>I.<sup>2</sup>*Replegiare.*

Vn hom porta vn *replegiare* vers vn altre et dist qe a tort prist cez auers certeyn iour an et leu.

*Wilby.* Nous auowoms la prise bone et renable par la reson qil tent de nous par homage fealte et par les services etc. et par syute a nostre Court de T. de III. sem(aines) en III. sem(aines) des<sup>3</sup> quex services etc. et pur la syute arer si auowoms la prise etc. sur cesti com sur nostre verey ten(ant) et deynz nostre fee.

*Pas.* Vostre auncestre enfeoffa nostre auncestre de mesme les tenemenz a ten(ir) de luy et de cez heirs par homage fealte et par les services etc. pur touz services saunz syute et parmy son fet qe si est. iugement si countre le fet son auncestre poet il destr(esce) auower.

<sup>1</sup> Reported by *C, E, P, R, T.*

<sup>2</sup> From *E.*

<sup>3</sup> Interlined.

Notes from the Record—*continued*.

seisin of common and pasture as in their common pasture appurtenant to their said burgages and tenements. And this he is ready to aver etc.

And the Abbot says that neither the said Alan nor any one of his ancestors nor any others who held the said burgages and tenements in Shrewsbury which the said Alan holds now, were ever in the seisin of common in the said place as appurtenant to any burgage or tenement in Shrewsbury, as the said Alan says. And as to this he puts himself upon the country.

And Alan (?) likewise.

Therefore the sheriff was commanded that he cause to come here on the quindene of Easter twelve etc. by whom etc. and who are neither etc. to find etc. because both etc.

And on that day the parties came etc. And the sheriff has not sent the writ etc.

Therefore the sheriff was commanded *sicut prius* that he cause to come here on the octave of Michaelmas twelve etc. because both etc.

30. DENE *v.* DROSEY.

## I.

## Replevin.

A man brought a *replegiare* against another and said that he had wrongfully taken his beasts on a certain day, (in a certain) year and place.

*Willoughby*. We avow the taking as good and reasonable by the reason that he holds of us by homage fealty and by the services etc. and by suit at our court of Smythewyk<sup>1</sup> from three weeks to three weeks, of which services etc. And for the suit in arrear we avow the taking etc., upon him as upon our true tenant, and within our fee.

*Passeley*. Your ancestor enfeoffed our ancestor of the same tenements, to hold of him and of his heirs by homage fealty and by the services etc. for all services, without suit. And (the feoffment was) by his deed which is here. Judgment whether he can avow distress against the deed of his ancestor.

<sup>1</sup> In the hundred of Barcombe, co. Sussex.



*Wilby.* Nous et nos auncestres auoms estee seis(is) de cele syute parmy vostre meyn et les meyns vos auncestres auaunt le passage et p(ui)s le passage continuelment ieke en sa. iugement si pur syute arer nous ne poms auowerye faire.

*Pas.* Nous auoms par stat(ut) qe nul ne seit destr(eint) a syute faire coudre la forme de son feoff(ement) sil ou cez auncestres nel eyent faite auaunt le passage, nous auoms vn altre poynt del estat(ut) qe nous eide qe veot qe qy qe seit feoffe par ch(ar)te pur certain service, cest assavoir pur franche service pur touz services qil ne seit destr(eint) a syute ou a autre chose faire. coudre la forme de son feoff(ement) et de sic(ome) nostre feoff(ement) nous ne charge force de certeynz services outre qex services lestatut ne veot mye qe<sup>1</sup> destr(esce) seit faite saunz auoir regard a la seisine auaunt le passage ou p(ui)s et demandoms iugement si etc.

*Wilby.* Il yad homage en la ch(a)r(t)e qe nest mye certain service par qey nous entendoms qe vous estes hor de cel poynt del estatut.

*Ber.* Sil fu feoffe a tenir par foreyn service il ne vous ostreynt pas del auerr(ement) qe vous tendez mes le homage en cel cas ou<sup>1</sup> il<sup>1</sup> est gros nent apend(ant) est certain service par qey il couent qe vous r(espondez) a cel fet.

*Wilby.* Nous ne poms desdire le fet mes nous demandoms vos agars desic(ome) nous voloms auerer nostre seisine et la seisine nos auncestres auaunt le passage et p(uis) continue ieke en sa. si nous ne poms auowerye faire.

*Pas.* Et nous iugement des(i)c(ome) vous auetz conue le fet vostre auncestre qe veot certain service. si pur autre service poetz auowerie faire.

*Heruy.* Pur ceo qe vous auetz conue le fet vostre auncestre qe veot certain service et vous ne poetz pur autre service qe ne s(oi)t compris deynz le fet auowerie faire. si agarde la Court qe vous ne preignetz rien par vostre auowerie et qil recou(ere) cez damages et vous en la merci etc.

<sup>1</sup> Interlined.

*Willoughby.* We and our ancestors have been seised of this suit, by your hand and the hands of your ancestors, before the passage and since the passage, continually up to now. Judgment whether we cannot make avowry for suit in arrear.

*Passeley.* We have it by statute<sup>1</sup> that no one be distrained to do suit against the form of one's feoffment, if he or his ancestors had not done (suit) before the passage. We have another point of the statute in our favour,<sup>2</sup> (for) it says that whoever be enfeoffed by charter by a certain service, to wit, by frank service, for all services, he should not be distrained to do suit or (anything) else against the form of his feoffment. And we pray judgment whether etc., because our feoffment imposes upon us but certain services, beyond which services the statute wills that no distress be made, without having regard to the seisin before or after the passage.

*Willoughby.* There is homage in the charter and that is not a service certain. Therefore we believe that you(r case) do(es) not fall under that point of the statute.

BEREFORD C.J. If he were enfeoffed to hold by foreign service he could not oust you from the averment which you tender. But the homage is service certain in this case where it is gross (and) not appendant. Therefore you must answer to this deed.

*Willoughby.* We cannot deny the deed, but we pray your award whether we cannot make avowry, since we are willing to aver our seisin and the seisin of our ancestors, before the passage and continued since, up to now.

*Passeley.* And we pray judgment, since you have acknowledged the deed of your ancestor which requires service certain, whether you can make avowry for (any) other service.

STANTON J. Since you have acknowledged the deed of your ancestor which requires service certain, and you cannot make avowry for other service, (to wit,) such as is not comprised in the deed, this Court awards that you take nothing by your avowry and that he recover his damages and you (are) in mercy etc.

<sup>1</sup> Stat. Marl. c. 9.

<sup>2</sup> *Or* : which helps us.



II.<sup>1</sup>

<sup>2</sup>*Replegiare* pur seute ou charte fut mys auant qe voleit pur touz seruices.<sup>2</sup>

<sup>3</sup>Celi qe tent de moy par sute fera a ma Court de treis symeines en .iiij. symeines si Bref de dreit seit pendaunt en ma Court ou laroun a lugger il vendra par aforcement. Mes sil tigne par certeyn seruicez pur touz seruicez il sera pas chace de venir a ceux Iournees *ut dicitur*.<sup>3</sup>

William auowa la prise pur ceo qe mesme cesti G. tient de luy etcetera. des queus seruices il fut seisi par my la meyn. B. etc. hors pris la seute <sup>4</sup>et de ceo<sup>4</sup> par my la meyn R. feffour<sup>5</sup> B. etc. pur la seute arrere vn an. auant<sup>6</sup> etc. si auowa etc.

*Pass.* Vostre Ael. qi heir etc. enfeffa le <sup>7</sup>Ael nostre feffour<sup>7</sup> etc. par ceste charte a tenir de luy etc. par les seruices <sup>8</sup>a pier vn.<sup>8</sup> paire des porouns<sup>9</sup> pris de vi. d. et<sup>10</sup> vi.<sup>6</sup> d.<sup>6</sup> pur touz seruices et demandoms iugement si encountre la forme de ceo feffement pusset<sup>11</sup> auowere etc.

Et mist auant la charte <sup>12</sup>qe ceo tesmoigna etc.<sup>12</sup>

Et dit qil fust en cas de statut<sup>13</sup> etc.

<sup>14</sup>*Will.* Statut voet<sup>14</sup> si luy ou ses auncestres etc. auant la passage <sup>15</sup>en Britaynge<sup>15</sup> et nous voloms auer qe nous et nos auncestres auoms este seisi dela seute auaunt etc.

*Pass.* Il ysount .iiij.<sup>16</sup> clauses<sup>17</sup> dount les ij. primers sont faitz par condicioun et <sup>18</sup>la tierce<sup>18</sup> saunz condicioun qe<sup>19</sup> dit si vn homme soit feffe par charte a tenir par certeynz seruices *tot solidorum* <sup>20</sup>*per annum*<sup>20</sup> *pro omni seruicio ad sectam vel aliud etc.* par <sup>21</sup>cele clause lestatut<sup>21</sup> nous eide<sup>22</sup> de puis qe nostre charte voet per<sup>23</sup> certa<sup>24</sup> seruicia<sup>25</sup> pur touz seruices.

<sup>1</sup> From *P.* Compared with *C, T.*    <sup>2-2</sup> *Om. T.*    <sup>3-3</sup> et pur ceo qil ne pout my dedire la charte fut agarde qe le pleintife recoueryst damages *C. Om. T.*  
<sup>4-4</sup> com *T.*    <sup>5</sup> feffa *T.*    <sup>6</sup> *Om. T.*    <sup>7-7</sup> etc. de ceux tenements *T.*    <sup>8-8</sup> a porter vn *C.* dun *T.*    <sup>9</sup> esporouns *T.*    <sup>10</sup> ou *C:* *Om. T.*    <sup>11</sup> *Add:* destr(esce) *T.*    <sup>12-12</sup> *Om. C.*    <sup>13</sup> *Add:* Marl(bridge) *T.*    <sup>14-14</sup> *Malm.* dit *T.*    <sup>15-15</sup> en Bretayn *C.* etc. *T.*    <sup>16</sup> .iiij. *T.*    <sup>17</sup> *Add:* enlestatut *T.*    <sup>18-18</sup> les deux *T.*  
<sup>19</sup> et *T.*    <sup>20-20</sup> annuatim *T.*    <sup>21-21</sup> celes clauses destatut *T.*    <sup>22</sup> eydoms *T.*  
<sup>23</sup> pro *C, T.*    <sup>24</sup> secta *T.*    <sup>25</sup> seruic' *T.*

## II.

Replevin. (Avowry) for suit, where a charter was put forward containing (the words) 'for all services.'

If a writ of right be pending in my court, or if a robber be to be judged, then he who holds of me by suit at my court from three weeks to three weeks shall come by afforcement. But if he hold by services certain for all services, he shall not be compelled to come on those days, as is said (in the report).

William avowed the taking for that this same John holds of him etc., of which services he was seised by the hand of the same John except the suit, of which he was seised by the hand of William of Mulestone the feoffor of John etc. He avowed etc. for the suit in arrear a year before etc.

*Passeley.* Your grandfather whose heir etc. enfeoffed the grandfather of our feoffor etc. by this charter, to hold of him etc. by the services of bringing one pair of spurs at the price of 6*d.* or<sup>1</sup> 6*d.* for all services. And we pray judgment whether against the form of this feoffment you can avow etc.

And he put forward the charter which witnessed this etc.

And he said that he was in the case of the statute<sup>2</sup> etc.

*Willoughby.* The statute says, 'if he or his ancestors etc. before the passage into Brittany,' and we are willing to aver that we and our ancestors were seised of the suit before etc.

*Passeley.* There are three clauses,<sup>3</sup> of which the first two are made on condition and the third without condition. It says, 'if a man be enfeoffed by charter to hold by certain services of so many shillings a year for all service, to suit or other etc.' By this clause the statute helps us, since our charter runs, 'by certain services for all services.'

<sup>1</sup> This is taken from *C* and corresponds better with the record. *P* has 'and.'

<sup>2</sup> Stat. Marl. c. 9.

<sup>3</sup> The first part of Stat. Marl. c. 9 runs: De sectis quidem faciendis ad Curias Magnatum et aliorum dominorum ipsarum Curiarum de cetero sic observandum est, scilicet quod nullus qui per cartam feoffatus est distringatur de cetero ad huiusmodi sectam faciendam ad curiam domini sui nisi per formam carte sue specialiter teneatur ad sectam illam faciendam: His tamen exceptis quorum antecessores, vel ipsimet huiusmodi sectam facere consueverunt ante primam transfretacionem Domini Regis in Britanniam, a tempore cuius trans-

fretacionis elapsi sunt triginta et novem anni et medietas unius anni tempore quo huiusmodi constitutiones fuerunt statute. Et similiter nullus feoffatus sine carta a tempore conquestus vel alio antiquo feoffamento distringatur de cetero ad huiusmodi sectam faciendam, nisi ipse et antecessores sui eam facere consueverunt ante transfretacionem Domini Regis supradictam. Qui autem per cartam pro certo servicio veluti pro libero servicio tot solidorum annuatim pro omni servicio solvendorum feoffati sunt, ad sectam vel aliud ultra formam sui feoffamenti, non teneantur. — *Stat. of the Realm*, i, 21.



*Will.* La charte voet qe vous deuēt homage et la charte <sup>1</sup>voet etc.<sup>1</sup> *Ego et heredes mei. dicta tenementa tali et heredibus suis et assignatis etc. pro homagio* <sup>2</sup>*et seruic(iis)*<sup>2</sup> *warantizabimus.*

Et a ceo la Court nauoit pas regard. pur ceo qe ceo fust en la clause de garantie *et non alibi in carta.*

Iudicium

Et pur ceo qil ne put dedire le fet. agarde fust qe le pleyntif recouerist ces damages etc.<sup>3</sup>

III.<sup>4</sup>

<sup>5</sup>*Replegiare* pur suyte ou le statut fut plede *qui per cartam feoffatus est.*<sup>5</sup>

Willelmus <sup>6</sup>de M<sup>6</sup> summonitus fuit ad respondendum Iohanni de Dene de placito quare cepit aueria ipsius Iohannis et ea iniuste detinet contra vad(ium) et pleg(ium) etc. Et vnde idem Iohannes per attornatum suum Michaellem de Wycombe<sup>7</sup> queritur quod predictus Willelmus die Sabbati proxima post festum sancti Cutberti in quadragesima anno iiij<sup>10</sup> etc. in villa de Falemere in quodam loco qui vocatur Multone<sup>8</sup> cepit iij. Multone<sup>9</sup> (*sic*) ipsius Iohannis et eos etc.<sup>10</sup> vnde dicit quod deterioratus est et dampn(a) habet ad valenciam .xl. solidorum et inde producit sectam etc.

Et Willelmus per attornatum suum venit et defendit vim et iniuriam qu(e) etc. et bene aduocat predictam capcionem et iuste etc. dicit enim quod predictus I. de Dene tenet de eo vnum mesuagium et quadraginta acras terre cum pertinenciis in predicta villa de Falmere per homagium et fidelitatem et seruic(ium) quarte partis <sup>11</sup>feedi (*sic*) vnus<sup>11</sup> militis set<sup>12</sup> ad scutagium domini Regis<sup>13</sup> cum accidit<sup>14</sup> x solidos et ad plus plus etc.<sup>15</sup> et faciend(o) sectam ad curiam ipsius W. de S.<sup>16</sup> per annum de tribus septimanis in tres septimanas et per seruicium vnus paris calcar(ium) <sup>17</sup>de auro<sup>17</sup> precii vi. denariorum uel vi d(enariorum) per annum. de quibus seruiciis ex(cep)ta secta predicta idem W. fuit seisis per manus ipsius .I. et de predicta secta per manus cuiusdam W.<sup>18</sup> filii Roberti de Multone<sup>19</sup> feoffatoris eiusdem I. etc. Et quia predicta secta ei a retro fuit per vnum annum ante diem capcionis predict(e) etc. aduocat ipse capcionem auerierum predictorum in predicto loco in feodo suo etc.

Et Iohannes dicit quod predictus W. predictam capcionem pro

<sup>1-1</sup> quod *T.*      <sup>2-2</sup> et seruicio suo *C.* suo *T.*      <sup>3</sup> *Add*: de xl. d. et la destr(esce) en la mercie et si ne fust la destr(esce) fors qe ceux motouns etc. *T.*  
<sup>4</sup> *From R. Compared with the record.*      <sup>5-5</sup> *Om. Rec.*      <sup>6-6</sup> *Drosey Rec.*  
<sup>7</sup> *Sytumbe Rec.*      <sup>8</sup> *Mulstone Rec.*      <sup>9</sup> *multones Rec.*      <sup>10</sup> iniuste detinuit contra vadium etc. quousque etc. *Rec.*      <sup>11-11</sup> vnus feodi *Rec.*      <sup>12</sup> scilicet *Rec.*  
<sup>13</sup> *Add*: quadraginta solidorum *Rec.*      <sup>14</sup> acciderit *Rec.*      <sup>15</sup> et ad minus minus *Rec.*      <sup>16</sup> *Smythewyk Rec.*      <sup>17-17</sup> deauratorum *Rec.*      <sup>18</sup> *Willelmi Rec.*      <sup>19</sup> *Mulstone Rec.*

*Willoughby.* The charter says that you owe homage and the charter says, etc.: 'I and my heirs shall warrant the said tenements to such a one and to his heirs and assignees etc. for homage and services.'

And to this the court had no regard, because it was in the clause of warranty and not elsewhere in the charter.

And because he could not deny the deed, it was awarded that the plaintiff recovered his damages etc. Judgment

### III.

*Replevin.* (Avowry) for suit where the statute<sup>1</sup> *qui per cartam feoffatus est* was pleaded.

William Drosey<sup>2</sup> was summoned to answer John of Dene in a plea why he took beasts of the said John and unjustly detain(ed) them against gage and pledges etc. And concerning this matter the said John by his attorney, Michael of Sytumbe, complains that the said William on (March 17, 1311) the Saturday next following the feast of St. Cuthbert in Lent in the fourth year etc., in the vill of Falmer,<sup>3</sup> in a place which is called Mulstone, took three sheep of the said John and (unjustly detained) them etc. whereby he says that he has suffered loss and has damage to the value of 40s. etc. And as to this he produces suit etc.

And William comes by his attorney, and denies force and wrong, when etc. And well he avows the said taking and justly etc. For he says that the said John of Dene holds of him one messuage and forty acres of land with the appurtenances in the said vill of Falmer, by homage and fealty and the service of one-fourth part of one knight's fee, <sup>4</sup>to wit<sup>4</sup> for the king's scutage when it occurs, 10s., and (if it be more (then) more, etc., and by making suit at the court of the said William of Smythewyke (throughout) the year from three weeks to three weeks, and by the service of one pair of gilt<sup>5</sup> spurs of the price of 6*d.*, or (by the service) of 6*d.* a year. Of these services, except the said suit, the said William was seised by the hands of the same John, and of the said suit by the hands of one William son of Robert of Mulestone who had enfeoffed the said John etc. And because the said suit was in arrear to him for a year before the day of the said taking etc., he avows the taking of the said beasts in the said place in his fee etc.

And John says that the said William cannot justly avow the said

<sup>1</sup> Stat. Marl. c. 9.

<sup>2</sup> William Drosey was described as 'of Fletching,' co. Sussex, in 1325 (*Cal. Close* 1323-7, p. 379).

<sup>3</sup> In the Rape of Lewes.

<sup>4</sup> Supplied from the Record.

<sup>5</sup> Supplied from the Record.



predicta secta iuste aduocare non potest etc. dicit enim quod predicta tenementa simul cum aliis tenementis dudum fuerunt in seisinā cuiusdam <sup>1</sup>W. de Dorsey<sup>1</sup> aui predicti .W. filii<sup>2</sup> Roberti<sup>2</sup> de<sup>2</sup> Mulstone (*sic*)<sup>2</sup> cuius heres ipse est. qui<sup>3</sup> tenementis illis feoffauit quondam (*sic*)<sup>4</sup> Willelmum auun(culum?)<sup>5</sup> predicti W. filii Roberti de Multone<sup>6</sup> cuius statum<sup>7</sup> Iohannes de Dene inde<sup>8</sup> habet in predictis tenementis tenementis (*sic*) tenendis per seruicium vnus paris calcarium precii vi denariorum pro omni seruicio, per cartam ipsius W. aui etc. quam profert (et) h(oc) testatur etc. Et petit iudicium si predictus W. contra factum predicti .W. antecessoris sui pro predicta secta predictam districtionem iust(e) aduocare possit.

Et W. bene cognouit predictam cartam esse factam<sup>9</sup> (*sic*) predicti W. antecessoris<sup>10</sup> etc. sed dicit quod per cartam illam preclusi<sup>11</sup> (*sic*) non de(be)nt<sup>12</sup> de predicta secta. dicit enim quod predictus W. Dorsey<sup>13</sup> antecessor<sup>14</sup> etc. fuit seisitus de predicta secta. per manus predicti <sup>15</sup>W. aui<sup>15</sup> predicti W. filii Roberti cuius statum idem I. habet etc. ante primam transfr(etacionem) domini H. Regis in Vasconiam etc. Et hoc paratus est verificare etc. et petit iudicium etc.

Et Iohannes dixit quod ex quo predictus W. cognouit predictam cartam esse factum predicti .W. aui etc. per quamquidem cartam predicta tenementa exonerentur<sup>16</sup> de predicta secta et exonerari debe(n)t etc. et maxime cum in stat(uto) domini regis continetur<sup>17</sup> quod nullus qui per cartam feoffatus est tenend(is) per certa seruicia pro omni seruicio ad sectam uel ad aliud seruicium faciend(um) contra formam feoffamenti sui minime te(neatur) petit iudicium etc.

Iugement

Et quia predictus W. superius cognouit predictam cartam esse factum predicti .W. antecessoris sui per quamquidem cartam predictus <sup>18</sup>W. Dorsey<sup>18</sup> feoffatus fuit per <sup>19</sup>predicta seruicia<sup>19</sup> pro omni seruicio videtur Curie quod predictus W. iniuste distrixit<sup>20</sup> pro predicta secta in hoc casu et ideo concessum<sup>21</sup> est quod predictus .I. habeat predicta aueria sua deliberata et recuperet dampna sua que taxantur per iust(iciarios) ad xl. denarios. Et .W. in misericordia.

<sup>22</sup>Rotulo ccxlvii.

Memorandum quod licet allegauerit seisinam de predicta secta tempore quo non extat memorie (*sic*) in hoc casu non valeret ei quia stat(utum) manifeste terminat.<sup>22</sup>

<sup>1-1</sup> Willelmi de Drosey *Rec.*    <sup>2</sup> *Om. Rec.*    <sup>3</sup> *Add: de Rec.*    <sup>4</sup> quondam *Rec.*    <sup>5</sup> Drosey auun *Rec.*    <sup>6</sup> Mulestone *Rec.*    <sup>7</sup> *Add: idem Rec.*    <sup>8</sup> nunc *Rec.*    <sup>9</sup> factum *Rec.*    <sup>10</sup> aui *Rec.*    <sup>11</sup> precludi *Rec.*    <sup>12</sup> debet *Rec.*    <sup>13</sup> Drosey *Rec.*    <sup>14</sup> auus *Rec.*    <sup>15-15</sup> Willelmi Drosey feoffatoris *Rec.*    <sup>16</sup> exonerantur *Rec.*    <sup>17</sup> continueatur *Rec.*    <sup>18-18</sup> Willelmus Drose *Rec.*    <sup>19-19</sup> predictum certum seruicium *Rec.*    <sup>20</sup> destrinxit *Rec.*    <sup>21</sup> consideratum *Rec.*    <sup>22-22</sup> *Om. Rec.*

taking for the said suit. For he says that the said tenements, together with other tenements, were formerly in the seisin of one William of Drosey, grandfather of the said William son of Robert of Mulestone, whose heir he himself is. And (William the grandfather) enfeoffed of the said tenements one William grandfather<sup>1</sup> of the said William son of Robert of Mulestone whose estate John of Dene has in the said tenements. (The feoffment was) to hold by the service of one pair of spurs of the price of 6*d.* for all service, (and it was) by charter of the said William grandfather etc. which he proffers (and which) witnesses this etc. And he prays judgment whether the said William can justly avow the said distress for the said suit, contrary to the deed of the said William his ancestor.

And William fully acknowledges that the said charter is the deed of the said William ancestor etc. But he says that by that charter he ought not to be precluded from the aforesaid suit. For he says that the said William Drosey ancestor etc. was seised of the aforesaid suit by the hands of the said William grandfather of the said William son of Robert whose estate the said John has etc., before the first passage of Lord Henry the King into Gascony etc. And this he is ready to aver etc. And he prays judgment etc.

And John says that since the said William has acknowledged that the aforesaid charter is the deed of the said William grandfather etc., and by that charter the said tenements are exempt, and ought to be exempt, from the said suit etc.; and above all since it is contained in the statute of our Lord the King that no one who is enfeoffed by charter to hold by services certain for all service, is bound to make suit or to do (any) other service, against the form of his feoffment—he prays judgment etc.

And because the said William has confessed (as stated above) that the said charter is the deed of the said William his ancestor; and (because) by that charter the said William Drosey was enfeoffed by the aforesaid services for all service,—it seems to the Court that the aforesaid William did unjustly distrain for the said suit in this case. Therefore it was considered that the said John have the delivery of his said beasts and recover his damages which are assessed by the justices at 40*d.* And William in mercy. Judgment.

<sup>2</sup>Roll 247.

Be it remembered that although he alleged seisin of the said suit from a time whereof memory runs not, in this case that would not avail him because the statute manifestly determines.<sup>2</sup>

<sup>1</sup> Supplied from the Record.

reporter's copy only, and not in the

<sup>2-2</sup> This passage stands in the record itself.



## Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 247 recto. Sussex.  
Written by Luding'.

The record agrees with the transcript in III, saving the variants marked above and a few minor differences in spelling etc.

31. { BECARD *v.* EUERINGHAM AND OTHERS.  
EUERINGHAM *v.* BECARD AND OTHERS.  
CHAPMAN *v.* BECARD AND OTHERS.  
BOTLEFFORD *v.* BECARD AND OTHERS.<sup>1</sup>

I.<sup>2</sup>*Replegiare.*

*Denom* counta de vne prise fet en lez Balkes de B. et de C. pro indiuiso.

*Scrope.* Balkes est en C. tut et ne mye en B. et C. et lauowerie est fet pur damag(e) fesant ; iugement.

*Denom.* En ij villes com nous auoms conu prest etc.

*Et alii econtra.*

II.<sup>3</sup>

Nota qe la ou A. fut pleynt qe B. a tort prist ces auers *scilicet* etc. en vn certain lu gest en deus vilez. *scilicet* en C. et en D. *pro indiuiso* etc.

B. auoua la prise etc. par la reson qe ceo leu dunt etc. si est vn grant annoy. et est enterement en la vile de C. et illuqe auouwe pur ceo qil truua etc. si les preymes nous cum en nostre seuerel damage fesaunz.

A. le leu ou nous sumes pleynt si est les ij. vilez *pro indiuiso* com nous prest etc.

*Et alii econtra.*

## Notes from the Record.

## I.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 125 verso. Yorkshire.  
Written by Luding'.

Alicia que fuit vxor Roberti de Eueringham Iohannes Roland et Robertus le Prouest in misericordia pro pluribus defaultis.

<sup>1</sup> Reported by C, G.

<sup>2</sup> From C.

<sup>3</sup> From G.

31. { BECARD *v.* EUERINGHAM AND OTHERS.  
 EUERINGHAM *v.* BECARD AND OTHERS.  
 CHAPMAN *v.* BECARD AND OTHERS.  
 BOTLEFORD *v.* BECARD AND OTHERS.

## I.

Replevin.

*Denom* counted of a taking made in the Balker which lies in B. and C. and is not divided.

*Scrope*. Balker is entirely in C. and not in B. and C., and the avowry is for damage feasant. Judgment.

*Denom*. In two villis as we have said. Ready etc.

Issue joined.

## II.

Note that where one A. complained that B. wrongfully took h(er) beasts, namely, etc., in a certain place which lies in two villis, namely, in C. and D. and is not divided etc.

B. avowed the taking by the reason that the place of which etc. is a great alder-wood<sup>1</sup> and lies entirely in the vill of C. and there he avows because he found etc. 'thus we took them as in our several damage feasant.'

A. (said :) The place where we have complained (that the taking took place) is in the two villis and is not divided as we (are) ready etc.

Issue joined.

## Notes from the Record.

## I.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 125 verso, Yorkshire.

Written by Luding'.

Alice, widow of Robert of Eueringham,<sup>2</sup> John Roland, and Robert the provost, in mercy for several defaults.

<sup>1</sup> The French word used here is *annoy*. The record has *alnetum*.

<sup>2</sup> Robert of Everingham seems to have died about 1305 (*Cal. Close* 1302-7, p. 268). His widow Alice in 1312

granted her third of Garthorpe to his son Thomas (*Cal. Pat.* 1307-13, p. 485). She was living at Everingham in 1313, when the house was attacked by Nicholas Meynell (*ibid.* p. 603; 1313-17, p. 65).



**Notes from the Record**—*continued.*

Idem Alicia et alii summoniti fuerunt ad respondendum Alicie que fuit vxor Petri Becard de placito quare ceperunt aueria ipsius Alicie que fuit vxor Petri et ea iniuste detinuerunt contra vadium et plegios etc. Et vnde eadem Alicia que fuit vxor Petri per attornatum suum dicit quod predicti Alicia que fuit vxor Roberti et alii die veneris proxima ante festum translacionis sancti Thome Martiris anno regni domini Regis nunc quarto in quodam loco qui vocatur Balker qui est pro indiuiso in villis de Belesby et Eueringham ceperunt quatuor Iumenta ipsius Alicie que fuit vxor Petri et ea iniuste detinuerunt contra vadium et plegios etc. quousque etc. vnde dicit quod deteriorata est et dampnum habet ad valenciam decem librarum Et inde producit sectam etc.

Et Alicia que fuit vxor predicti Roberti et alij per attornatum suum veniunt Et eadem Alicia respondet pro se et aliis Et defendit vim et iniuriam qu(ando) etc. Et dicit quod ipsa est domina ville de Eueringham in qua predictus locus de Balker est, qui quidem locus est quoddam Alnetum, in quo loco ipsa predictis die et anno inuenit quosdam de hominibus ipsius Alicie que fuit vxor predicti Petri succidentes Alnos suos et eos cum caretis et equis cariare volentes, per quod ipsa cepit predicta quatuor Iumenta et duas caretas ipsius Alicie etc. Et ita aduocat ipsa capcionem predictorum aueriarum et caretarum in predicto loco qui est in predicta villa de Eueringham et non in predictis villis de Belesby et Eueringham pro indiuiso, et iuste etc., pro transgressione predicta.

Et Alicia que fuit vxor Petri dicit quod predicta Alicia que fuit vxor Roberti capcionem illam iustam aduocare non potest, quia dicit quod predictus locus in quo etc. non est in predicta villa de Eueringham tantum, Immo in predictis villis de Belesby et Eueringham sicut queritur. Et de hoc ponit se super patriam.

Et Alicia que fuit vxor Roberti similiter. Ideo preceptum est vicecomiti quod venire faciat hic in octabis sancti Hillarii xii etc. per quos etc. Et qui nec etc. Quia tam etc.

**Notes from the Record**—*continued*.

The same Alice and the others were summoned to answer Alice, widow of Peter Becard,<sup>1</sup> in a plea why they took beasts of the said Alice, widow of Peter, and unjustly detained them against gage and pledges etc. And concerning this matter the said Alice, widow of Peter, says by her attorney that the said Alice widow of Robert, and the others, on the Friday next preceding the feast of the Translation of St. Thomas the Martyr, in the fourth year of the reign of our Lord the present King, in a place which is called Balker and lies in the vills of Beilby and Everingham without being divided, took four (head of) cattle of the said Alice widow of Peter and unjustly detained them against gage and pledges etc. until etc., whereby she says that she has suffered loss and has damage to the amount of £10. And as to this she produces suit etc.

And Alice, widow of the said Robert, and the others, come by their attorney. And the said Alice answers for herself and for the others, and denies force and wrong when etc. And she says that she is the lady of the vill of Everingham, in which the said place of Balker is situated, and that place is an alder-wood, and in that place, on the said day and in the said year, she found some of the men of the said Alice; wife that was of the said Peter, felling her alder-trees and intending to carry them off on carts (*cum caretis et equis cariare*), wherefore she took the said four (head of) draught oxen and two carts of the said Alice etc. And she avows thus the taking of the said beasts and carts, for the said trespass, and justly etc. in the said place which is situated in the said vill of Everingham and not in the said vills of Beilby and Everingham without being divided.

And Alice, widow of Peter, says that the said Alice, widow of Robert, cannot avow that taking as just, because she says that the said place in which etc. is not situated in the said vill of Everingham only, but in the said vills of Beilby and Everingham <sup>2</sup>as stated in her complaint.<sup>2</sup> And as to this she puts herself upon the country.

And Alice, wife that was of Robert, likewise. Therefore the sheriff was commanded that he cause to come here on the octave of St. Hilary twelve etc. by whom etc. And who are neither etc. Because both etc.

<sup>1</sup> Peter Becard attended the King overseas in 1279 (*Cal. Pat.* 1272-81, p. 307), and was a collector of the 7th and 11th in 1295 (*ibid.* 1292-1301, p. 171). He was a commissioner of oyer and terminer in Yorkshire, Lancashire, Nottingham and Derby in 1298 (*ibid.* p. 338; *Cal. Close* 1296-1302, p. 205), and was appointed to hear cases arising out of Magna Carta in the same counties in 1300 (*Cal. Pat.*

1292-1301, p. 517). Shortly afterwards he was empowered to arrest deserters (*ibid.* p. 527). In the same year the townsmen of Bromfleet and Faxfleet complained that he and other tenants of Beilby had diverted Belebywath Water to the damage of their land (*ibid.* p. 553). The date of his death is uncertain.

<sup>2-2</sup> The original has: as she complains.



Notes from the Record—*continued.*

## II.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 276 recto.    Yorkshire.  
Written by Wysshawe.

Alicia que fuit vxor Petri Becard Thomas de Pykerynge et Elizabeth vxor eius Petrus Becard Thomas Russel et Willelmus filius Henrici de la More attachiati fuerunt per breue de iudic(i)o ad respondendum Alicie que fuit vxor Roberti de Eueringham de placito quare ceperunt aueria ipsius Alicie et ea iniuste detinuerunt contra vadium et plegios etc. Et vnde eadem Alicia que fuit vxor Roberti per Simonem de Beuerlaco attornatum suum queritur quod predicti Alicia que fuit vxor Petri et alij die veneris proxima ante festum sancti Petri ad vincula anno regni domini Regis nunc quinto in villa de Eueringham in quodam loco qui vocatur Belkar ceperunt duas Iuencas ipsius Alicie que fuit vxor Roberti et eas iniuste detinuerunt contra vadium et plegios etc. quousque etc. vnde dicit quod deteriorata est et dampnum habet ad valenciam decem librarum etc. Et inde producit sectam etc.

Et Alicia Petrus Becard Thomas Russel et Willelmus per Thomam de Burtone attornatum suum et Thomas de Pykeringe et Elizabeth' per Iohannem de Kendale attornatum suum veniunt Et defendunt vim et iniuriam qu(ando) etc. Et dicunt quod ipsi non ceperunt predictas Iuencas: dicunt reuera quod ipsi Alicia que fuit vxor Petri Thomas de Pikeringe et Elizabeth' vt de iure ipsius Elizabethhe tenent predictum locum in quo etc. in separalitate cum predicta Alicia de Eueringham pro indiuiso inter Eueringham et Beleby in quo loco ipsi predictis die et anno inuenerunt aueria quorundam Roberti de Burtone et Willelmi de Botelefford. herbam suam depascencia et conculcancia etc. ceperunt aueria illa et ad parcum suum illa fugauerunt que quidam (*sic*) aueria Iuence predictae ad parcum predictum in (*sic*) sequebantur. Et q(uia) predicti Alicia que fuit vxor Petri et alij perpendentes Iuencas illas esse aueria predictae Alicie de Eueringham recenter a parco illo abire permiserunt Et hoc parati sunt verificare etc.

Et Alicia de Eueringham dicit quod predicti Alicia que fuit vxor Petri et alij predictis die et anno ceperunt predictas Iuencas et eas iniuste detinuerunt contra vadium etc sicut queritur Et de hoc ponit se super patriam.

Et Alicia que fuit vxor Petri et alij similiter. Ideo preceptum est vicecomiti quod venire faciat hic in Crastino Purificacionis beate Marie xii etc. per quos etc Et qui nec etc ad recognoscendum etc Quia tam etc.

Notes from the Record—*continued*.

## II.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 276 recto. Yorkshire.  
Written by Wysshawe.

Alice, widow of Peter Becard, Thomas of Pykerynge,<sup>1</sup> and Elizabeth his wife, Peter Becard,<sup>1</sup> Thomas Russel,<sup>2</sup> and William the son of Henry de la More were attached by a judicial writ to answer Alice, widow of Robert of Eueringham, in a plea why they took beasts of the said Alice and unjustly detained them against gage and pledges etc. And concerning this matter the said Alice, widow of Robert, complains by Simon of Beverley, her attorney, that the said Alice the widow of Peter and the others, on (July 30, 1311) the Friday next preceding the feast of St. Peter *ad vincula* in the fifth year of the reign of our Lord the present King, in the vill of Everingham, in a certain place which is called Balkar, took two heifers of the said Alice, wife that was of Robert, and unjustly detained them against gage and pledges etc. until etc., whereby she says that she has suffered loss and has damage to the amount of £10 etc. And as to this she produces suit etc.

And Alice, Peter Becard, Thomas Russel, and William, come by Thomas of Burtone their attorney, and Thomas of Pykerynge, and Elizabeth, come by John of Kendale their attorney, and they deny force and wrong when etc. And they say that they did not take the said heifers. They say indeed that they, (that is) Alice widow of Peter, Thomas of Pikeringe, and Elizabeth, as in the right of the said Elizabeth do hold in severalty with the said Alice of Eueringham the said place in which etc., (which lies) without being divided between Everingham and Beilby, and in that place on the said day and in the said year they found the beasts of one Robert of Burtone and William of Botelefford, eating and treading their grass etc., (therefore) they took those beasts and drove them to their park, and the said heifers followed those beasts to the said park, and they the said Alice, widow of Peter, and the others, perceiving that the said heifers were the beasts of the said Alice of Eueringham, did recently allow them to go away from that park. And this they are ready to aver etc.

And Alice of Eueringham says that the said Alice widow of Peter and the others on the said day and in the said year did take the said heifers and did unjustly detain them against gage etc. as she complains. And as to this she puts herself upon the country.

And Alice, widow of Peter, and the others, likewise. Therefore the sheriff was commanded that he cause to come here on the morrow of the Purification of Blessed Mary twelve etc. by whom etc. And who are neither etc. to find etc. Because both etc.

<sup>1</sup> Thomas of Pykerynge and Peter Bekard held a quarter of a fee in Ellerton and Beilby of Alice widow of Ralph of Greystock in 1323 (*Cal. Close* 1323-7, p. 49).

<sup>2</sup> Thomas Russell was a forester of Knaresborough in 1305 (*Cal. Close* 1302-7, p. 292; *Cal. Pat.* 1301-7, p. 383).



Notes from the Record—*continued.*

## III.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 265 verso. Yorkshire.  
Written by Wysshawe.

Alicia que fuit vxor Petri Becard Thomas de Pykerynge et Elizabeth' vxor eius Petrus Becard Thomas Russel et Willelmus filius Henrici de la More attachiati fuerunt per breue de Iudicio ad respondendum Roberto le Chapman de placito quare ceperunt aueria ipsius Roberti le Chapman et ea iniuste detinuit (*sic*) contra vadium et plegios etc. Et vnde idem Robertus per Simonem de Beuerlaco attornatum suum queritur quod predicti Alicia et alij die veneris proxima ante festum sancti Petri aduincula anno regni Regis nunc quinto in villa de Eueringham in quodam loco qui vocatur Balke ceperunt quatuor vaccas et duas Iuencas ipsius Roberti et eas iniuste detinuerunt contra vadium et plegios quousque etc. vnde dicit quod deterioratus est et dampnum habet ad valenciam decem librarum Et inde producit sectam etc.

Et Alicia Thomas<sup>1</sup> Petrus<sup>2</sup> Russel et Willelmus per Thomam de Burtone attornatum suum et Thomas de Pykeringe et Elizabeth per Iohannem de Kendale attornatum suum veniunt Et iidem Alicia Thomas de Pykeringe et Elizabeth' pro se et aliis defendunt vim et iniuriam qu(ando) etc. Et bene aduocant predictam capcionem et iuste de quinque vaccis et duabus Iuencis, quia dicunt quod ijdem Alicia Thomas et Elizabeth' vt de Iure ipsius Elizabeth tenent predictum locum in quo etc. in separalitate cum quadam Alicia de Eueringham, pro indiuiso inter Eueringham et Beleby et quia ipsi predictis die et anno inuenerunt aueria predicta herbam suam depassencia (*sic*) et conculcancia ceperunt ipsi aueria illa sicut eis bene licuit etc.

Et Robertus dicit quod predictus locus in quo etc est tantum in villa de Eueringham et non indiuiso (*sic*) inter Beleby et Eueringham, et hoc paratus est verificare per patriam Et Alicia, Thomas et Elizabeth similiter Ideo preceptum est vicecomiti quod venire faciat hic in Crastino Purificacionis beate Marie xii etc. per quos etc. Et qui nec etc. Ad recognoscendum etc. Quia tam etc.

## IV.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 276 recto. Yorkshire.  
Written by Wysshawe.

This record is quite similar to that set out above under (III), the only differences of importance being that the plaintiff is Willelmus de Botlefford, the name of the place in which the taking occurred is spelled Balkar, and the beasts taken were six cows and two heifers (sex vaccas et duas Iuencas).

<sup>1</sup> An insertion after a word has been scratched out.

<sup>2</sup> Interlined.

Notes from the Record—*continued*.

## III.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 265 verso. Yorkshire.  
Written by Wysshawe.

Alice, widow of Peter Becard, Thomas of Pykerynge and Elizabeth his wife, Peter Becard, Thomas Russel and William the son of Henry de la More, were attached by judicial writ to answer Robert le Chapman in a plea why they took beasts of the said Robert le Chapman and unjustly detained them against gage and pledges etc. And concerning this matter the said Robert complains by Simon of Beverley, his attorney, that the said Alice and the others, on (July 30, 1311) the Friday next preceding the feast of St. Peter *ad vincula*, in the fifth year of the reign of the present King, in the vill of Everingham, in a certain place which is called Balker, took four cows and two heifers of the said Robert and unjustly detained them, against gage and pledges, until etc., whereby he says that he has suffered loss and has damage to the amount of £10. And as to this he produces suit etc.

And Alice, Thomas,<sup>1</sup> Peter, Russel,<sup>1</sup> and William come by Thomas of Burtone, their attorney, and Thomas of Pykeringe and Elizabeth come by John of Kendale their attorney. And the said Alice, Thomas of Pykeringe, and Elizabeth, for themselves and for the others deny force and wrong when etc. And they fully avow the said taking and justly as to five cows and two heifers. For they say that the said Alice, Thomas, and Elizabeth, as in the right of the said Elizabeth, hold the said place in which etc. in severalty with one Alice of Eueringham, (and it is) not divided between Everingham and Beilby, and because on the said day and in the said year they found the said beasts eating and treading their grass, they took those beasts as well they might etc.

And Robert says that the said place in which etc. is only in the vill of Everingham and not undivided between Beilby and Everingham. And this he is ready to aver by the country. And Alice, Thomas, and Elizabeth likewise. Therefore the sheriff was ordered that he cause to come here on the morrow of the Purification of Blessed Mary twelve etc. by whom etc. And who are neither etc. To find etc. Because both etc.

<sup>1-1</sup> Obvious confusion.



32. { POMELESBURNE v. THE BISHOP OF ELY AND ANOTHER.  
 { HAYWARD v. THE BISHOP OF ELY AND OTHERS.  
 { LOUTH v. THE BISHOP OF ELY AND OTHERS.<sup>1</sup>

I.<sup>2</sup>

*Replegiare* des cheuers ou lavouerie fut fet pur ceo qil les truua en soun parc clos et lautre dit qe ceo fut sa commune a toz ces bestes par qei etc.

Vn Adam se pleynt qe leuesqe de Ely atort prist ces auers. nomenment xx cheuers en certeyne vyle et leu. qest apele foreyn boys.

*Malm.* E. auouwe etc. bone et r(esonable) par la reson qe mesme ceo boys si est le parc le vesqe enclos pur ces bestes sauages. Et pur ceo qe nous trouames les cheuers damage fesaunz com broutant soun boys. les preymes et nous issint lauouoms etc.

*Scrop.* Iugement de ceste auouwerie. car vous auet auoue pur damage fesaunz. et nauet pas assigne certeyne cause dauouer(ie). qe vous nauet pas dit. qe cest vostre seuerel. ne qe nous ne deuoms la communer. iugement etc.

*Berr.* Si ceo seit vostre commune dunqe il vst fet maueys auouwerie. mes il dit. qe cest Parc enclos etc. et pur ceo qil les troua damage fesaunz. si les prist il.

*Scrop.* A tele auouwerie nauendra il my. car mesme ceo boys si est nostre commune apendaunt a nostre fraunch(ise) en mesme la vile a touz maners des auers. iugement si en nostre commune pussent sur nous auouwerie fere pur damage fesaunz.

*Toud.* Cheuers ne sunt pas bestes de commune par qei etc.

*Berr.* Il dit qil est seisi de communer oue tote maners de bestes. cum apendaunt etc. dunt sil seit seisi de communer oue touz meners de bestes. auxi ben put il mettre ces cheuers en ces parks cum autre manere de bestes. oyl ces ouwys et gelyns sil voudra.

*Malm.* Nous vous dioms qil ne fut vnqe seisi de communer oue cheuers pus la lymytacioun du bref de nouele disseisine.

*Scrop.* A ceo nauendret mye qe nous vous dioms qe cest nostre commune apendaunt par qei nous pooms de commun dreit vser nostre commune oue tote manere des bestes. auxi ben oue cheuers. cum a autre manere de bestes. par qei vous ne seret my receu a dire vnqe seisi de cheuers. si vous ne diet qe nous nauoms la nule commune.

*Herle.* Vostre plee est soulment de Cheuers par qei nous nauoms my mester de pleder dautres bestis.

<sup>1</sup> Reported by C, G, T, X.

<sup>2</sup> From G.

32. { POMELESBURNE *v.* THE BISHOP OF ELY AND ANOTHER.  
 { HAYWARD *v.* THE BISHOP OF ELY AND OTHERS.  
 { LOUTH *v.* THE BISHOP OF ELY AND OTHERS.

## I.

Replevin for goats. The avowry was based on the statement that he had found them in his park close. The other said that that was his common for all his beasts wherefore etc.

One Robert complains that the Bishop of Ely wrongfully took his beasts, to wit, twenty goats, in a certain vill and place which is called Foreign Wood.

*Malberthorpe.* The Bishop avows (the taking) as good and reasonable by the reason that this very wood is the bishop's enclosed park for his game. And because we found the goats damage feasant, (for instance) browsing<sup>1</sup> in his wood, we took them and thus we avow etc.

*Scrope.* Judgment of this avowry. For you have avowed for damage feasant and you have not shown any certain cause of the avowry, since you did not say that this is your several, or that we ought not to common there. Judgment etc.

BEREFORD C.J. If this be your common then he would have made a bad avowry. But he says that this is his park enclosed etc. and (that) because he found them damage feasant he therefore took them.

*Scrope.* To such an avowry he cannot get. For this same wood is our common appendant to our franchise in this same vill, for all sorts of beasts. Judgment whether they can avow upon us for damage feasant in our common.

*Toudeby.* Goats are not beasts of common, wherefore etc.

BEREFORD C.J. He says that he is seised of common for all kinds of beasts, as appendant etc. Hence if he be seised of common for all manner of beasts, he can put into those parks his goats as well as other kinds of beasts, nay, (even) his ewes and chickens if he so wish.

*Malberthorpe.* We tell you that he has never since the limitation of the writ of novel disseisin been seised of common for goats.

*Scrope.* To that you cannot get, for we tell you that this is our common appendant, wherefore we can by common right use our common for every kind of beasts, as well for goats as for other kinds of beasts. Therefore you shall not be received to say, never seised of goats, if you do not say that we have there no common (at all).

*Herle.* Your plea relates only to goats, wherefore we need not plead as to other beasts.

<sup>1</sup> *broutant.*



*Berr. ad idem.* Vostre plee est tut de cheuers par<sup>-</sup> qei etc.

*Scrop.* Nous sumes seisi de communer oue tote manere des bestis. auxi ben de cheuers cum de autres bestis.

*Herle. vt prius.*

*Ideo ad patriam.*

Mesme cely A se pleynt qe mesme le vesqe atort auoyt pris ces berbyz en mesme le boys. ou Leuesqe auoua pur damage fesaunz *vt supra.*

A qei A. respoundit cum auaunt qe ceo fut sa commune oue tote manere des bestis. iugement *vt supra.*

A ceo fut respoundu qil ne fut my seisi pus la lymitacioun de commune a berbiz prest etc.

*Et alii econtra.*

## II.<sup>1</sup>

Le Eueske de Ely auowa la prise de cheures pur dam(age) fesant en soun parke et ne deit<sup>2</sup> nent en soun seueral ne<sup>3</sup> qe en cel leu le plentif ne<sup>4</sup> deit<sup>5</sup> communer, et ceo<sup>4</sup> fut chalange, et fut agarde bon.

*Denom.* Nostre commune. prest etc.

*Toud.* Coment vostre<sup>6</sup> commune: <sup>7</sup>par espec(ialte) ou par appendant.<sup>7</sup> qe vous nous<sup>4</sup> auez grante le soil.

*Denom.* Cum appendant a nostre franc tenement en mesme la ville.

*Toud.* Vnqes seisi a<sup>8</sup> communer <sup>4</sup>oue ch(eu)res<sup>4</sup> cum appendant prest etc.

*Denom.* Seisi a<sup>4</sup> communer<sup>4</sup> oue<sup>9</sup> checune manere de<sup>4</sup> bestes cum appendant prest<sup>4</sup> etc.<sup>10</sup>

Et<sup>11</sup> dit fut en ceo plee qe <sup>12</sup>ch(eu)res ne sunt pas bestes ne porcz pur ceo qe ch(eu)res dest(r)uent la commune et porcz fouwent la terre.<sup>12</sup>

<sup>13</sup>Item auowerie de berbiz *eadem racione* et si est berbiz best(e) de commune.

*In vtroque casu* il granta la commune enteysant.<sup>13</sup>

<sup>1</sup> From *C.* Compared with *T.*    <sup>2</sup> dit *T.*    <sup>3</sup> *Add:* dit *T.*    <sup>4</sup> *Om.* *T.*  
<sup>5</sup> dust *T.*    <sup>6</sup> clam(ez) *T.*    <sup>7-7</sup> ou com appendant ou par espe(cial)te *T.*    <sup>8</sup> de  
cheuerer de *T.*    <sup>9</sup> de *T.*    <sup>10</sup> *Add:* *Den.* de chescun manere de bestes com appendant  
etc. *T.*    <sup>11</sup> mais *T.*    <sup>12-12</sup> porcos ne cheuerers (?) ne sont bestes de commune  
pur ceo qe porcos et cheueres destruont la commune foyuant la terre etc. *T.*  
<sup>13-13</sup> *Om.* *T.*

BEREFORD C.J. (to the same purpose). Your plea relates entirely to goats, wherefore etc.

*Scrope*. We are seised of common for all manner of beasts, goats as well as other beasts.

*Herle* (as above).

Therefore to the country.

The same Robert complains that the same Bishop wrongfully took his sheep in the same wood. The Bishop avowed for damage feasant as above.

To that Robert answered, as before, that this was his common for all manner of beasts. Judgment (as above).

To that it was answered that he was never seised, since the limitation, of common for sheep. Ready etc.

Issue joined.

## II.

The Bishop of Ely avowed the taking of goats for damage feasant in his park. And he did not say, in his several, or that in that place the plaintiff ought not to common. And this was challenged, but was awarded (a) good (plea).

*Denom*. Our common. Ready etc.

*Toudeby*. In what way your common? By specialty or as appendant? For you have granted (that) the soil (is ours).<sup>1</sup>

*Denom*. As appendant to our freehold in the same vill.

*Toudeby*. Never seised (of the right) to common for goats as appendant. Ready etc.

*Denom*. Seised (of the right) to common for all manner of beasts as appendant. Ready etc.

And it was said in this plea that goats and swine are not beasts<sup>2</sup> because goats destroy the common and swine dig the ground.

Likewise avowry for sheep (was made) by the same reason, and (yet)<sup>3</sup> a sheep is a beast of common.

In both cases he granted the common in silence.

<sup>1</sup> *Or*: you have granted the soil to us.

<sup>2</sup> *I.e.* beasts of common.

<sup>3</sup> ? (*si*).



III.<sup>1</sup>*Replegiare.*

Ion Stepper porta *Replegiare* vers Wauter Evesqe de Excestre et autres de ses cheures a tort pris.

*Malm.* Wauter auowe pur luy et les autres pur ceo qe le lieu ou etc. est en le park leuesqe et pur ceo qil troua les cheures brusauntz etc. si auowe il pur damage fesaunt.

*Denh.* Il nad pas dit. qe le leu est son seueral. Iugement de cest auowerie.

*Scrop* (sic). La court entent qe son park est son seueral.

*Scrop.* Nostre commune. prest.

*Malm.* Coment ?

*Scrop.* Apurtenaunt a ii fraunk tenaunts.

*Malm.* De peus qe cheures sount bestes qe debrusent et fount greindre damage en Boys qe autres bestes Iugement si en nostre boys peusez tiele commune clamer saunz espec(i)aute).

*Scrop.* Donques nous conicez vous la commune apurtenaunt a autres bestes et la ou homme ad commune apurtenaunt ceo deit estre de commun droit a tute manere de bestes.

*Ber. negavit hoc.*

*Malm.* Il ne communa vnqes oue cheures peus la limit(acioun) de Bref de nouele disseisine.

*Scrop.* Si mes feffors<sup>2</sup> nauoient vnqes boef ne vach(e) peus la limitacioun ceo ne me oste pas. nient plus de cheures ne pur quaunt seisi peus prest.

*Alii contra.*

## Notes from the Record.

## I.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 60 verso. Hertfordshire.  
Clerk unknown.

Iohannes Episcopus Elyensis et Willelmus le Forester summoniti fuerunt ad respondendum Roberto de Pomelesburne de placito quare ceperunt aueria ipsius Roberti et ea iniuste detinuerunt contra vad(ium) et pleg(ios) etc. Et vnde Idem Robertus per Willelmum de Totenham attornatum suum queritur quod predicti Episcopus et Willelmus die veneris proxima ante festum sancti Dunstani anno Regni Regis nunc quarto in villa de Hatfeld in quodam

<sup>1</sup> From X.

<sup>2</sup> Added, in different ink, above the line.

## III.

## Replevin.

John Stepper brought a *replegiare* against John Bishop of Ely<sup>1</sup> and others, for wrongfully taking his goats.

*Malberthorpe.* John<sup>1</sup> avows for himself and for the others, because the place where etc. is in the bishop's park. And because he found the goats breaking etc., he avows for damage feasant.

*Denom.* He did not say that the place is his several. Judgment of this avowry.

*Scrope.*<sup>2</sup> The court understands that the park is his several.

*Scrope.* Our common. Ready.

*Malberthorpe.* How?

*Scrope.* Appurtenant to two freeholds.

*Malberthorpe.* Since goats are beasts which break woods and do greater damage to them than other beasts, judgment whether you can claim, without specialty, such a common in our wood.

*Scrope.* Then you acknowledge the common appurtenant for<sup>3</sup> other beasts—and where one has common appurtenant this ought to be, by common right, for<sup>3</sup> all kinds of beasts.

BEREFORD C.J. denied this (statement).

*Malberthorpe.* He has never had common for goats since the limitation of the writ of novel disseisin.

*Scrope.* If my feoffors had never an ox or a cow since the limitation, that does not oust me. Nor (is your proposition) any more (true) of goats. Nevertheless (we are) ready (to aver that we were) seised since (the limitation).

Issue joined.

## Notes from the Record.

## I.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 60 verso. Hertfordshire.  
Clerk unknown.

John, Bishop of Ely,<sup>4</sup> and William le Forester, were summoned to answer Robert of Pomelesburne in a plea why they took beasts of the said Robert and unjustly detained them against gage and pledges etc. And concerning this matter the said Robert complains by William of Totenham, his attorney, that the said Bishop and William on (May 14, 1311) the Friday next preceding the feast of St. Dunstan, in the fourth year of the reign of the present

<sup>1</sup> The text has: Walter, Bishop of Exeter—perhaps in order to avoid confusion of the two Johns.

<sup>2</sup> Perhaps SCROPE J.

<sup>3</sup> It seems that 'for' is the proper translation of *a* in this connexion.

<sup>4</sup> John Keeton 1310-16 (Stubbs, *Reg. Sacrum Anglicanum*).



Notes from the Record—*continued*.

loco qui vocatur le Graunt foreyn boys ceperunt triginta capras ipsius Roberti et eas fugauerunt vsque ad parcum ipsius Episcopi in eadem villa et eas iniuste detinuit (*sic*) contra vad(ium) et pleg(ios) etc. quousque etc. vnde dicit quod deterioratus est et dampnum habet ad valenciam quadraginta solidorum Et inde producit sectam etc.

Et Episcopus et Willelmus per Benedictum de Cantebr(igia) attornatum suum veniunt Et defendunt vim et iniuriam qu(ando) etc. Et Episcopus respondit (*sic*) pro se et pro predicto Willelmo Et bene aduocat predictam capcionem et iuste etc. Quia dicit quod ipse inuenit capras illas in parco ipsius Episcopi ibidem boscum suum bruscantes et herbam suam depascentes et dampnum facientes et pro dampno illo cepit ipse capras illas sicut ei bene licuit etc.

Et Robertus dicit quod predictus Episcopus predictam capcionem iustam aduocare non potest in predicto loco quia dicit quod ipse habet communem pasturam in eodem loco ad omnia animalia et pecora sua omni tempore anni tanquam pertinentem ad liberum tenementum suum in eadem villa Et hoc paratus est verificare etc. vnde petit iudicium etc.

Et Episcopus dicit quod predictus Robertus nuncquam fuit seisisus communicandi in predicto parco suo cum aliquibus capris suis tanquam pertin(entibus) ad liberum tenementum suum in eadem villa. Et de hoc ponit se super patriam.

Et Robertus similiter.

Ideo preceptum est vicecomiti quod venire faciat hic a die sancti Hillarii in xv dies xii etc. per quos etc. Et qui nec etc. ad recognoscendum etc. Quia tam etc.

## II.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 71 verso. Hertfordshire.  
Written by Burnedisshe.

This record is almost word by word identical with that set out above in (I), with the following exceptions: the plaintiff is Iohannes (le) Hayward; the defendants are, apart from the bishop and William, Rogerus filius Willelmi le Forester et Robertus atte Burne; the taking complained of occurred on the Saturday next following the feast of St. Dunstan (in the same fourth year). All other details (including the number of beasts, the amount of damages claimed, the names of the attorneys, the day of the jury etc.) are the same.

## III.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 135 recto. Hertfordshire.  
Written by Burnedisshe.

In this case one Rogerus de Luda is plaintiff and the bishop, William le Forester, and Roger his son are defendants. The action is a *replegiare* for one

## Notes from the Record—continued.

King, in the vill of Hatfield, in a certain place which is called the Great Foreign Wood, took thirty goats of the said Robert and drove them up to the park of the said Bishop in the said vill, and unjustly detained them, against gage and pledges etc., until etc., whereby he says that he has suffered loss and has damage to the amount of 40s. And as to this he produces suit etc.

And the Bishop and William come by Benedict of Cambridge, their attorney, and deny force and wrong when etc. And the Bishop answered for himself and for the said William. And he fully avows the said taking and justly etc. For he says that he found those goats in the park of the said Bishop there, breaking his wood and eating his grass and damage feasant, and for that damage he took those goats as well he might etc.

And Robert says that the said Bishop cannot avow the said taking in the said place as just, for he says that he has a common of pasture in the same place for all beasts and cattle of his at all times of the year, as belonging to his freehold in the said vill.<sup>1</sup> And this he is ready to aver etc., and as to this he prays judgment etc.

And the Bishop says that the said Robert has never been seised of common in his said park for any of his goats, as belonging to his freehold in the said vill. And as to this he puts himself upon the country.

And Robert likewise.

Therefore the sheriff was commanded that he cause to come here on the quindene of St. Hilary twelve etc. by whom etc. and who are neither etc. to find etc. because both etc.

## II.

## III.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 135 recto. Hertfordshire.  
Written by Burnedisshe.

In this case one Roger of Louth<sup>2</sup> is plaintiff and the Bishop, William le Forester, and Roger his son, are defendants. The action is a *replegiare* for

<sup>1</sup> The Great Park at Hatfield provided pasture for horses and cattle and pannage for the swine of the Bishop's tenants in chief, all of whom had common right and wood-right in 1277. In the Middle Park, however,

the tenants had no rights at this date (*V.C.H. Herts*, iii, 99).

<sup>2</sup> Roger of Louth was exempted, in 1318, from assizes, juries and recognitions, and from being sheriff, coroner or officer of the Crown (*Cal.*



## Notes from the Record—continued.

hundred sheep (centum bidentes), which, it is complained, were taken on the Thursday in the week of Pentecost, in the fourth year of Edward II. The damage complained of is 100s. The bishop's plea is similar, *mutatis mutandis*, to that in (I), but he only says that 'inuenit predictas bidentes in parco suo predicto herbam suam depascentes et dampnum facientes,' without mentioning any special damage to the wood. In his later reply, the bishop asserts 'quod predictus Rogerus nuncquam fuit seisitus communicandi in predicto parco suo cum aliquibus bidentibus suis tanquam pertin(entibus) ad liberum tenementum suum in eadem villa.' The rest of the record is similar to that in I and II.

33. TRAFFORD v. RADECLIUE.<sup>1</sup>I.<sup>2</sup>

<sup>3</sup>*Replegiare* ou estraunge purchasour de la seignorie fist lauorie de sa seisine demesne sanz m(u)strer especiaute qi testm(oigne) le grant et le purch(ace) etc.<sup>3</sup>

Henri de tafford<sup>4</sup> porta soun *replegiare* vers William<sup>5</sup> de Radecliue et dist qe atort prist ces auers.

*Denom.* William avowe etc. par la resoun qe meme cesti Henri tient en asqun tens les tenemenz ou la price fust fete de Robert le fiz Richard de Radecliue<sup>6</sup> par homage feaute et par cele<sup>7</sup> seruice<sup>8</sup> de vn<sup>9</sup> maille par an etc. le quel Robert granta meme le<sup>7</sup> seruice<sup>8</sup> a William de Radecliue par le<sup>10</sup> grant Tafford<sup>11</sup> se<sup>12</sup> atorna a William de Radecliue de la maille et pur fealte arere si auo(uoms) la price sur Henri de T.<sup>12</sup> com sur nostre verrey tenant.

*Scrop.* Quei auez del graunt.

*Denoun.* Prest del auerrer.

<sup>1</sup> Reported by *C, P, R, T.*    <sup>2</sup> From *P.* Compared with *R.*    <sup>3-3</sup> *Replegiare* pur feaute *R.*    <sup>4</sup> Originally Stafford, but the S cancelled *P.* Stanford *R.*    <sup>5</sup> a v is added and cancelled *P.*    <sup>6</sup> Radeceleyue *R.*    <sup>7</sup> les *R.*    <sup>8</sup> seruices *R.*    <sup>9</sup> vne *R.*    <sup>10</sup> quel *R.*    <sup>11</sup> H. de S. *R.*    <sup>12-12</sup> Om. *R.*

## Notes from the Record—continued.

one hundred sheep which, it is complained, were taken on (May 27, 1311) the Thursday in the week of Pentecost, in the fourth year of Edward II. The damage complained of is 100s. The Bishop's plea is similar, *mutatis mutandis*, to that in I, but he only says that he found the said sheep in his said park eating his grass and damage feasant, without mentioning any special damage to the wood. In his later reply, the Bishop asserts that the said Roger has never been seised of common in his said park for any of his sheep, as belonging to his freehold in the said vill. The rest of the record is similar to that in I and II.

33. TRAFFORD *v.* RADECLIUE.

## I.

Replevin, where a <sup>1</sup>strange purchaser<sup>1</sup> of the seignory avowed on the ground of his own seisin without showing specialty which would witness the grant and the purchase etc.

Henry of Trafford<sup>2</sup> brought his *replegiare* against William of Radecliue<sup>3</sup> and said that he had wrongfully taken his beasts.

*Denom.* William avows etc. by the reason that this same Henry held at one time the tenements where the taking was made, from Richard the son of Robert of Radecliue by homage fealty and by the service of one halfpenny<sup>4</sup> a year etc.<sup>5</sup> The said Richard granted the said service to William of Radecliue. By that grant Trafford attorned to William of Radecliue of the halfpenny. And for fealty in arrear we avow the taking upon Henry of Trafford as upon our true tenant.

*Scrope.* What have you (in proof) of the grant?

*Denom.* Ready to aver it.

*Pat.* 1318-21, p. 161), but he appears as a commissioner of oyer and terminer in 1322 (*ibid.* 1321-4, p. 250). In 1323 he had a pension of 40s., granted by Sir Water de Twynham and John de Eglesfeld, successive lords of Merdele, co. Herts (*Cal. Close* 1318-23, p. 644).

<sup>1-1</sup> *I.e.* 'a stranger in by purchase,' *Y.B.* 1/2 E. II. S.-S. 59 n. 3.

<sup>2</sup> In 1302 a writ of aid for the collectors of the 15th in Lancashire was addressed to Henry of Trafford (*Cal. Pat.* 1301-7, p. 16). He was appointed a commissioner of oyer and terminer in the same county in 1315 (*ibid.* 1313-17, p. 421), and in the following year was summoned to the Chancery at York to receive orders for the King's service (*Cal. Close* 1313-18, p. 430).

<sup>3</sup> In 1304 William of Radeclive and Robert his brother were appealed by Agnes widow of Robert atte Brigge of the death of her husband (*Cal. Pat.* 1301-7, p. 271), and in 1327 William and his son Richard were accused of assaulting William of Boterwyk (*ibid.* 1324-7, p. 348).

<sup>4</sup> The Record has *oboli*, and the French text *maille*.

<sup>5</sup> The service for Edgeworth was in dispute as early as 1295, when the sheriff was ordered to inquire whether Henry of Trafford held of Richard of Radeclive by  $\frac{1}{2}d.$  and  $\frac{1}{8}$  of a knight's fee, as Richard claimed, or by  $\frac{1}{2}d.$  only as Henry asserted (*V.C.H. Lancs.* v, 281 n.).



*Scrop.* Vous veez coment il est estraung(e) purchasur de la seignorie <sup>1</sup>et des<sup>1</sup> seruicez. et il ne m(u)str(e) nul especiaute qe testm(oignast) soun purchase. <sup>2</sup>ne qe nous estraunge<sup>2</sup> de nostre verey seignur. iugement si saunz especiaute m(u)strer tiel auore<sup>3</sup> fere. qar sil meit auaunt fin ou autre choce <sup>4</sup>qi ly<sup>4</sup> donast garr(ant) de fere cest auoir(ie) et qe testm(oignast) le graunt nous p(urri)oms dire qe null tel fin ce leua etc. ou sil meit ch(a)r(t)e nous s(au)roms<sup>5</sup> rien<sup>6</sup> adire qe uous nauiez vnqe estat parmy cel ch(a)r(t)e et del houre quil ne mostre lun ne lautre iugement si tiel auoir(ie) p(us)sez fere.

*Berr.* Auaunt le attornement duissez vous auer chalange et alegge qe uous dussez a ly attorn(er) en ve(i)uaunt<sup>7</sup> vostre primer seignur saunz m(u)strer especiaute et noun pas apres et del houre qil dist qe cely qe pouer en auoit graunta la seignorie etc. par quel graunt vous attornastes de<sup>8</sup> la maille et<sup>9</sup> seisi est par my vostre mayn lauoyr(ie) est assez bone et pur ceo r(espondez) outre.

*Scrop.* Vnqe seisi par my cele graunt prest etc.

*Et alius econtra.*

Inquisicio

## II.<sup>10</sup>

### *Replegiare.*

William Radecl<sup>11</sup> auowa la prise etc. par la reson qe mesme cesti Henri qe<sup>12</sup> se<sup>12</sup> pleynt<sup>12</sup> tient le man(oir) de C dont<sup>12</sup> etc.<sup>13</sup> vn Richard<sup>14</sup> fitz Ro.<sup>15</sup> de R.<sup>11</sup> par homage fealte et par les seruices dun maille par an des quex seruices mesme cesti Richard<sup>14</sup> fust seisi par my la mayn Henri<sup>16</sup> com etc.<sup>12</sup> le qel ac<sup>17</sup> granta les service auant dits<sup>12</sup> a mesme cesti William par<sup>18</sup> quel grant mesme<sup>12</sup> cesti<sup>12</sup> Henri se attorna de la maille par quel attornement W<sup>19</sup> fust seisi parmie<sup>20</sup> la mayn Henri<sup>21</sup> com etc. et pur la fealte arere si auowe il etc.

<sup>22</sup>*Scrop.* Vous auowetz com purchacour quey auez de ceo.

*Berr.* Minus tarde qe ceo dussez auer dit auant lauerrement.<sup>22</sup>

<sup>1-1</sup> de les R.    <sup>2-2</sup> ou il nous bie estrang(er) R.    <sup>3</sup> pussetz R.    <sup>4-4</sup> qil R.  
<sup>5</sup> seroms R.    <sup>6</sup> receu R.    <sup>7</sup> viuant R. In both MSS. the word is somewhat doubtful.  
<sup>8</sup> a R.    <sup>9</sup> Add: il R.    <sup>10</sup> From T. Compared with C. Headnote from C.  
<sup>11</sup> Randolf C.    <sup>12</sup> Om. C.    <sup>13</sup> de C.    <sup>14</sup> R. C.    <sup>15</sup> Robert C.  
<sup>16</sup> H. C.    <sup>17</sup> Ric. C.    <sup>18</sup> Add: vertue de C.    <sup>19</sup> William C.    <sup>20</sup> The m has one stroke too much in T.    <sup>21</sup> H. dela mayle C.    <sup>22-22</sup> Om. C.

*Scrope.* You see that he is a <sup>1</sup>strange purchaser<sup>1</sup> of the seignory and of the services. And he does not show any specialty which would witness his purchase or which would estrange<sup>2</sup> us from our true lord. Judgment whether you can<sup>3</sup> make such an avowry without showing specialty. For if he should put forward a fine or some other thing which would serve him as a warrant for making this avowry and which would witness the grant, then we could say that no such fine was (ever) levied. Or (else) if he should put (forward a) charter <sup>4</sup>we should know something<sup>4</sup> (which we might say to the effect) that you have never had estate by that charter. And since he shows neither the one nor the other, judgment whether you can make such an avowry.

BEREFORD C.J. (It is) before the attornment and not after it (that) you ought to have challenged and alleged that you ought not<sup>5</sup> to attorn to him, waiving your former lord, without (his) showing specialty. And since he says that the man who had the power of doing so, did grant the seignory etc., and by that grant you attorned of the halfpenny, and he is seised by your hand, the avowry is good enough and therefore answer over.

*Scrope.* Never seised by that grant. Ready etc.

Issue joined.

Inquisition

## II.

### Replevin.

William Radecliue avowed the taking etc. by the reason that that same Henry who complains held the manor of Edgeworth whereof etc. (of) one Richard the son of Robert of Radecliue by homage fealty and by the service of one halfpenny<sup>6</sup> a year, of which services that same Richard was seised by the hand of Henry as etc. Richard<sup>7</sup> granted the aforesaid services to this same William, by which grant the said Henry attorned of the halfpenny. By that attornment William was seised by the hand of Henry as etc. And for the fealty in arrear he avows etc.

*Scrope.* You avow as purchaser. What have you (in proof) of that?

BEREFORD C.J. (This exception) is not raised at the proper time, for this you ought to have said before the attornment.<sup>8</sup>

<sup>1-1</sup> See note 1, p. 129.

<sup>2</sup> *I.e.* sever the relations between tenant and former lord.

<sup>3</sup> Supplied from *R.*

<sup>4-4</sup> Or, according to *R.* 'we should be received to say that . . .'

<sup>5</sup> It seems necessary to add this in order to make the text intelligible.

<sup>6</sup> See note 4, p. 129.

<sup>7</sup> Supplied from *R.*

<sup>8</sup> The text has: averment.



*Scrop.* Onques seisi de la maille parmy nostre mayn prest etc.

*Et al(ii) econtra.*

*Berr.*<sup>1</sup> Il pout auer auowe de soun estat demesne sanz faire mencion de soun feffor pur ceo qil fut seisi del rente et rente tret<sup>2</sup> aluy fealte.

*Denom.* Done vssoms<sup>3</sup> perdu<sup>4</sup> homage <sup>5</sup>et ceo ne vous dioms pas etc.<sup>5</sup>

#### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 268 recto. Lancashire.  
Written by Burnedisshe.

Willelmus de Radecliue in misericordia pro pluribus defaultis etc.

Idem Willelmus summonitus fuit ad respondendum Henrico de Trafford de placito quare cepit aueria ipsius Henrici et ea iniuste detinuit contra vadium et plegios etc. Et vnde Idem Henricus per Robertum de Grottone attornatum suum queritur quod predictus Willelmus die Mercurij proxima ante festum Pentecost(e) anno regni domini Regis nunc quarto in villa de Eggeworthe in quodam loco qui vocatur Fernnhill cepit septem boues vnam vaccam vnum bouiculum tres Iuencas ipsius Henrici Et eos iniuste detinuit contra vadium et plegios quousque etc. vnde dicit quod deterioratus est et dampnum habet ad valenciam decem librarum Et inde producit sectam etc.

Et Willelmus per Robertum de P(ont)one attornatum suum venit Et defendit vim et iniuriam qu(ando) etc Et quo ad predictos boues bouiculum et Iuencas bene defendit quod ipse non cepit aueria illa sicut predictus Henricus queritur Et de hoc ponit se super patriam.

Et Henricus similiter.

Et quo ad capcionem predictae vacce bene aduocat capcionem illam et iuste Quia dicit quod predictus Henricus quondam tenuit manerium de Eggeworth de quodam Ricardo filio Roberti de Radeclyue per homagium fidelitatem (et per)<sup>6</sup> seruicium vnus oboli per annum De quibus seruiciis Idem Ricardus fuit seisitus per manus ipsius Henrici vt per manus vere tenentis sui etc. Qui quidem Ricardus seruicium ipsius Henrici tenentis sui de predicto manerio concessit et assignauit ipsi Willelmo pretextu cuius assignacionis Idem Henricus attornauit se ipsi Willelmo de predicto seruicio vnus oboli Et quia fidelitas ipsius Henrici ei a retro fuit die capcionis etc. cepit ipse predictam vaccam in predicto loco que (*sic*) est parcella predicti manerii sicut ei bene licuit.

Et Henricus dicit quod predictus Willelmus predictam capcionem iustam aduocare non potest in forma predicta etc. Quia dicit quod predictus Willelmus nunquam fuit seisitus de predicto seruicio vnus oboli per manus ipsius Henrici sicut predictus Willelmus dicit. Et hoc petit quod inquiratur per patriam.

<sup>1</sup> *Add: dit qil C.*

<sup>2</sup> *attret C.*

<sup>3</sup> *Add: nous C.*

<sup>4</sup> *Add: nostre C.*

<sup>5-5</sup> *Om. C.*

<sup>6</sup> *Destroyed.*

*Scrope.* (He has) never (been) seised of the halfpenny by our hand.  
Ready etc.

Issue joined.

BEREFORD C.J. He could have avowed (on the ground) of his own estate without mentioning his feoffor, because he was seised of the rent and (a) rent attracts to itself (the) fealty.

*Denom.* Then we should have lost the homage and we say nothing like that to you etc.

#### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 268 recto. Lancashire.  
Written by Burnedisshē.

William of Radecliue in mercy for several defaults etc.

The same William was summoned to answer Henry of Trafford in a plea why he took beasts of the said Henry and unjustly detained them against gage and pledges etc. And concerning this matter the said Henry complains by Robert of Grottone, his attorney, that the said William, on (May 19, 1311) the Wednesday next preceding the feast of Pentecost, in the fourth year of the reign of our Lord the present King, in the vill of Edgeworth, in a certain place which is called Fernhill, took seven oxen, one cow, one bullock, and three heifers of the said Henry, and unjustly detained them, against gage and pledges until etc., whereby he says that he has suffered loss and has damage to the amount of £10. And as to this he produces suit etc.

And William comes by Robert of Pontone, his attorney, and denies force and wrong when etc. And as to the said oxen, bullock and heifers he entirely denies that he (ever) took those beasts as the said Henry complains. And as to this he puts himself upon the country.

And Henry likewise.

And as to the taking of the said cow he fully avows the said taking and justly etc. For he says that the said Henry at one time held the manor of Edgeworth of one Richard the son of Robert of Radecliue, by homage, fealty, and by the service of one halfpenny a year. And of those services the said Richard was seised by the hands of the said Henry as by the hands of his true tenant etc. And that Richard granted and assigned to him, William, the service of the said Henry, his tenant of the said manor, and by reason of that assignment the said Henry attorned to the said William of the said service of one halfpenny. And because the fealty of the said Henry was in arrear to him on the day of the taking etc., he took the said cow in the said place which is a parcel of the said manor, as well he might.

And Henry says that the said William cannot avow the said taking as just, in the said form etc. For he says that the said William has never been seised of the said service of one halfpenny by the hands of the said Henry, as the said William alleges. And he prays that this may be inquired by the country.



## Note from the Record—continued.

Et Willelmus similiter.

Ideo preceptum est vicecomiti quod venire faciat hic a die Pasche in tres septimanas xii etc. per quos etc. Et qui nec etc. ad recognoscendum etc. Quia tam etc.

34. ANON.<sup>1</sup>

*Replegiare* agarde bon pur baron et sa femme *contr(arium)* *m(ichaelis)* xii.

Le Baron et la femme porterent le *Replegiare*. le Bref fust chalenge pur le noun de la femme *non allocatur exceptio* qar *locus capcionis fuit de iure vxoris*.

*Herle* auowa la prise en seural damage fesaunt.

*Passeley*. Nous et nostre femme et les auncestres nostre femme auoms eu tut temps et vsee de communer la del bon venderdy tauntz qe a la Trinite.

*Herle*. Vous auez graunte qe le soil est nostre. Iugement si commune peusez clamer saunz especialte ou saunz dire ap(pani)r.

*Wilb*. Le soil est a la comminalte de la ville issint qe nul ne siet son seural taunt qe al temps de fauch(er).

*Herle*. Vous ne resortirez pas ore daffermer le soil en aut(ri) persone.

## 35. QUERY.

Questio.

Homme peut prendre bestes enfuant hors de son seural. questio si homme peut destr(eindre) enfuaunt hors de son feo pur seruices.

36. CONESTABLE v. FEURE.<sup>2</sup>

Nota.

Nota qe la ou vn hom count en vn bref de neifte il dirra si le cas seit tel qil mesme fu seisi et son auncestre od tote adeprimes qil mesme fu seisi pernaunt les espleez come de rechat de char et de saunke a fuiz

<sup>1</sup> From X.

<sup>2</sup> From E.

**Note from the Record**—*continued*.

And William likewise.

Therefore the sheriff was commanded that he cause to come here in three weeks from Easter twelve etc. by whom etc. And who are neither etc. to find etc. Because both etc.

## 34. ANON.

*Replegiare* awarded good for a husband and his wife. The contrary in Michaelmas Term of the twelfth year.

The husband and the wife brought the *replegiare*. The writ was challenged because of the wife's name. This exception was not allowed, for the place of the taking was of the wife's right.

*Herle* avowed the taking in (his) several (for) damage feasant.

*Passeley*. We and our wife and our wife's ancestors have had at all times, and (have) used, (the right) of common there from Good Friday till Trinity.

*Herle*. You have granted that the soil is ours. Judgment whether you can claim common without specialty or without saying.

*Willoughby*. The soil belongs to the commonalty of the vill so that no one sows his several until the time of haymaking.<sup>1</sup>

*Herle*. You may not resort now to affirming (the right to) the soil in another's person.

## 35. QUERY.

One can take<sup>2</sup> beasts flying from one's several. *Qu.* whether one can distrain (by beasts) flying from one's fee, for services?

36. CONESTABLE *v.* FEURE.

## Note.

Note that where one counts in a writ of naifty one will say whether the case be such that one was seised, and (so was) one's ancestor, and, first of all, whether he was seised himself taking the esplees, as of ransom of flesh and blood to marry sons and daughters, and (so

<sup>1</sup> This means that in the period specified by *Passeley* all members of the commonalty have common use, and then individual members are allowed to treat

their shares as their individual property. Apparently the sowing would convert the common into individual allotments.

<sup>2</sup> For damage feasant.



et files. marier et a faire. de luy son proust a tailor haut et bas a sa volente et en altre manere des issues de vileyns custumes et seruices. mountaunt etc. et puis de la seisine son auncestre en mesme le count liera les espleez en mesme la manere come auaunt etc.

#### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 187 recto, Yorkshire.  
Written by Luding'.

Robertus le Conestable de Holdernesse alias in comitatu predicto petit Stephanum fratrem Roberti fil(ii) Ricardi le Feure Natium et fugituum suum etc qui simul cum predicto Roberto fratre suo fugit de terra sua post Coronacionem domini H. Regis aui etc Ita quod ad petitionem petentis p(ostp)osita fuit loquela hic ad hunc diem etc.

Et modo venit predictus Robertus per attornatum suum et similiter predictus Stephanus Et idem Robertus dicit quod predictus Stephanus iniuste dedit esse villanum suum etc. Quia dicit quod ipsemet fuit seisisus de predicto Stephano villano suo vt de feodo et iure tempore pacis tempore domini Regis nunc talliando ipsum alto et basso etc Et dicit quod quidam Robertus proauus istius Roberti nunc cuius heres ipse est fuit seisisus de quodam Wilhelmo antecessore ipsius Stephani villano suo vt de feodo et Iure tempore pacis tempore H Regis aui predicti Regis nunc talliando ipsum alto et basso et faciendo de ipso prepositum et capiando de ipso merchetum pro filiabus suis maritandis et alia villana seruicia etc Et de ipso Wilhelmo exiuit quidam Robertus de quo quidam Wilhelmus auus istius Roberti le Conestable cuius heres ipse est fuit seisisus vt de villano suo in forma predicta tempore pacis tempore Edwardi Regis patris domini Regis nunc etc. Et de ipso Roberto filio Wilhelmi exierunt quidam Ricardus et Iohannes, de quibus quidam Simon pater predicti Roberti fuit seisisus vt de villanis suis in forma predicta tempore pacis tempore predicti E Regis patris etc. Et de ipso Ricardo exiuit predictus Stephanus qui nunc etc et quidam Galfredus frater eius <sup>1</sup>vnde idem Robertus est seisisus. Et <sup>1</sup>de quo quidem Stephano iste Robertus le Conestable nunc <sup>1</sup>seisisus fuit<sup>1</sup> vt de villano suo sicut supradictum est, vsque iam duobus annis elapsis ante impetracionem breuis quod predictus Stephanus fugit de terra ipsius Roberti et se subtraxit etc Et idem Robertus le Conestable producit hic in Curia predictos Iohannem filium Roberti auunculum istius Stephani qui nunc etc et ipsum Galfredum fratrem eiusdem Stephani, qui se cognoscunt esse villanos predicti Roberti le Conestable etc.

<sup>1-1</sup> Interlined.

as) to make him a provost, to tallage high and low at one's will, and otherwise of the issues of villein customs and services amounting etc.<sup>1</sup> And afterwards, as to the seisin of one's ancestor, in the same count one will allege the esplees in the same manner as (was said) before etc.

### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 187 recto. Yorkshire.  
Written by Luding'.

Robert the Constable of Holderness<sup>2</sup> did before now in the said county demand Stephen the brother of Robert the son of Richard le Feure, his native and fugitive etc., who together with the said Robert, his brother, fled from his land after the coronation of Lord Henry the King grandfather etc. So that upon the request of the plaintiff the hearing was postponed until this day etc.

And now comes the said Robert by his attorney, and similarly the said Stephen. And the said Robert says that the said Stephen unjustly denies that he is his (Robert's) villein etc. For he says that he himself was seised of the said Stephen, his villein, as of fee and of right in time of peace in the time of our Lord the present King, tallaging him high and low, etc. And he says that one Robert, great-grandfather of this Robert, the present (plaintiff), whose heir he is, was seised of one William, ancestor of this Stephen, his villein, as of fee and right, in time of peace in the time of King Henry grandfather of the said present King, tallaging him high and low and making him (his) provost and taking from him a merchet for marrying his daughters, and other villein services etc. And from that William there issued one Robert, of whom one William grandfather of this Robert the Constable, whose heir he is, was seised as of his villein in the said form, in time of peace in the time of Edward the King, father of our Lord the present King etc. And from that Robert, the son of William, there issued Richard and John, of whom one Simon, father of the said Robert, was seised as of his villeins in the said form, in time of peace in the time of the said Edward the King, father etc. And from that Richard there issued the said Stephen who now etc., and one Geoffrey his brother, of whom the said Robert is seised. And of this Stephen this Robert the Constable, (the) present (plaintiff), was seised as of his villein as was said above, until two years before the purchase of the writ, when the said Stephen fled from the land of this Robert and withdrew etc. And the said Robert the Constable produces here in Court the said John the son of Robert, uncle of this Stephen who now etc., and the said Geoffrey the brother of the said Stephen, who (both) recognise that they are villeins of the said Robert the Constable etc.

<sup>1</sup> As to villein customs see Vinogradoff, *Villainage in England*, pp. 156-7.

<sup>2</sup> Robert the Constable of Holderness was a commissioner 'de walliis' along the Humber and on the sea-coast of Holderness and Dickering in 1319

(*Cal. Pat.* 1317-21, p. 374) and commissioner of array in Holderness in 1322 (*ibid.* 1321-4, p. 99). He died before January 9, 1335 (*Cal. inq. p.m.* viii, No. 52).



**Note from the Record**—*continued*.

Et Stephanus bene cognoscit quod ipse est villanus ipsius Roberti le Conestable Ideo predictus villanus liberatur predicto Roberto suo (*sic*) hic in Curia etc.

37. WALTER *v.* THE PRIOR OF LAUNCESTON AND OTHERS.<sup>1</sup>I.<sup>2</sup>

Trespas pour bestes pris en lautre estree ou la partie dit qe (retorn) ly feut agarde nient repleuisable.

Vn Robert porta son bref de trespas vers le Priour de Lancastre et le bref volleit qe com ne lyst a nul homme fere destres en le haut estree ou hors de son fee hors pris le Roy etc. mesme cely Priour certain iour scilicet le Lundi prochein auant la feste des apostles seint Per' et seint Pool lan qarte etc. prist les auers mesme cesti R. scilicet vn beofe et ii. vaches etc. encountre la ley et la coustume etc.

Item vn Iohn porta autiel bref vers mesme cely et vn William chesqun de autiel prise.

*Denom.* Qaunt a Richard nous dioms qe nous preimes v. beofs et ii. vaches etc. certain iour lan terce etc. en H. com en nostre seuerall damage fesant issint qun A. fit repleu' ses auers et se attacha de syure vers nous en Counte par qei nous feimes remuer la parole en Banke as vtaues de seint Mich' lan iiii. donqe il feut esson(ie) et auoit tanqe a les vtaues de seint Hillare a qel iour il ne siwyst pas par qei retorn nous feut agarde ou il siwyst autre bref hors des Roulles retorn(able) a la xv. de Pasche en mesme lan au qel iour il ne siwyst pas par qei retorn feut agarde nient repleuis' et issint sumus nous seisi par vertue de tiel iugement de les bestes.

*Scrop.* Nous auoms dit qe vous mesmes les preistes hors de vostre fee par qei si vous vollez dire qe vous ne les preistes pas einz les auietz de la liuere le vicounte dites ceo etc.

*Heruy.* Il vous dit etc. vt prius et issint est il seisi par liuere de vicounte et par vertue de cel iugement.

<sup>1</sup> Reported by C, E, M, P, R, X.

<sup>2</sup> From M.

**Note from the Record**—*continued*.

And Stephen fully recognises that he is villein of the said Robert the Constable etc. Therefore the said villein is delivered to the said Robert, his (lord), here in Court etc.

37. { WALTER *v.* THE PRIOR OF LAUNCESTON<sup>1</sup> AND OTHERS.  
BALGER *v.* THE PRIOR OF LAUNCESTON AND OTHERS.  
MARTIN (OF TREMUR) *v.* THE PRIOR OF LAUNCESTON  
AND OTHERS.

**I.**

Trespass for beasts taken in the high<sup>2</sup> street, where the (other) party said that irreplevisable return had been awarded him.

One William Walter brought his writ of trespass against the Prior of Launceston and the writ said, that whereas it is not lawful for any-one to levy distress in the high street or outside one's fee, except the King etc., this same Prior had on a certain day, to wit, on (June 28, 1311) the Monday next preceding the feast of the Holy Apostles S. Peter and S. Paul, in the fourth year etc., taken the beasts of this same William, to wit, one ox and two cows etc., against the law and custom etc.

Likewise one William Balger brought such writ against the same, and so did one Martin, each for such a taking.

*Denom.* As to William Walter we say that we took five oxen and two cows etc. on a certain day in the third year etc. in H. as in our several, damage feasant, so that one A. caused his beasts to be replevied and attached himself to sue against us in the county, wherefore we caused the hearing to be removed into the Bench on the octave of Michaelmas of the fourth year, he then was essoined and had until the octave of St. Hilary, and on that day he did not sue, wherefore return was awarded to us. He then sued another writ out of the rolls, returnable on the quindene of Easter in the same year, and on that day he did not sue, wherefore irreplevisable return was awarded. And thus we are seised of the beasts by virtue of such a judgment.

*Scrope.* We have said that you took them outside your fee, therefore if you want to say that you did not take them, but that you had them by the delivery of the sheriff, say so etc.

STANTON J. He tells you etc. (as before) and thus he is seised by the sheriff's delivery and by virtue of that judgment.

<sup>1</sup> Launceston Priory was a house of Austin Canons (Dugdale, *Mon.* vi, 210); the election of Roger of Horton as Prior was confirmed in May 1308 (*ibid.* 211;

*Cal. Pat.* 1307-13, p. 69).

<sup>2</sup> The text has *lautre*, which is probably a mistake for *l'haute*.



*Wilb.* Nous pleignons de nos auers atort pris et il en respoign(ance) allegge vn iugement qe se fit vers vn estranger a qel iugement nous ne sumus pas partie par qei ceo est nul r(espounse) a nostre accioun qar mesqe vn iugement se fit vers vn estrange par taunt nauez mye poair de prendre mes auers.

*Den.* Ceo qe nous auoms dit nous volloms auerrer par recorde qun tiel iugement se fit et qe ceux sount mesme les bestes qe furent pris en nostre seueral des ques auers ly est agarde retorn nient repleuis'. iugement si accioun etc.

*Berr.* Donqe conissez qil sount ses auers.

*Den.* Ceo ne puis dedire me depuis qe ieo la pris etc. au tiel iour etc. en mon seueral, et puis furent repleuiz etc. vt prius et retorn agarde et G. seisi etc.

*Berr.* Vous dites qe vous les preistes lan terce etc. et il se pleint dun prise fait lan iiii. etc. hors de vostre fee etc. qei responez vous a ceste prise ?

*Denom. vt supra.*

*Berr.* Qei est ceo a ly ou a la prise de qel il se pleint qun retorn vous feut agarde vers vn estraunge persone *q(uas)i d(iceret) n(ihi)l* et pour ceo volletz autre chose dire.

*Den.* Nous dioms qe nous preimes les bestes lan terce etc. en nostre seueral etc. issint etc.

*Herle.* Qei est ceo a ly il se pleint dune prise fait certain iour lan quarte responez a ceo.

*Denom.* Tiel iour com il ad counte ne tiel an ne tiel lieu ne preimes pas ses auers prest etc. einz preimes tiel an com nous auoms dit.

*Berr.* De ceo nauoms qe faire qe nous ne volloms ia entrer en roule de ceo qe vous preistes autrefoitz qe de ceo ne se pleint il pas.

*Wilb.* Nous volloms auerrer qe vous les preistes mesme lan et mesme le iour etc.

*Et alii econtra etc.*

*Den.* Qaunt a Iohn nous dioms qe nous preimes ses auers lan terce en nostre seueral dam' etc.

*Berr.* Il ne se pleint forsqe de la prise lan qarte.

*Denom.* Si nous dedeissoms la prise simplement la eux par aventure neyent regard au temps et dirreient encontre nous. Et pourceo prioms qil seit entre en roule qe nous conissons la prise lan terce.

*Willoughby.* We complain that our beasts have been wrongfully taken and in answer he alleges a judgment that was made against a stranger and to which judgment we are not a party. Therefore that is no answer to our action, for even if a judgment was made against a stranger you have thereby no power to take my beasts.

*Denom.* We are willing to aver by record that which we have said, to wit, that such a judgment was made, and that these are the same beasts which were taken in our several and of which irreplevisable return was awarded to him (the defendant). Judgment whether an action etc.

BEREFORD C.J. Then you confess that they are his beasts?

*Denom.* I cannot deny this, but since I took them etc. on such a day etc., in my several, and then they were replevied, etc. (as before), and return (was) awarded and G. (the defendant) seised etc. . . .

BEREFORD C.J. You say that you took them in the third year etc. and he complains of a taking made in the fourth year etc. outside your fee etc. What do you answer to that taking?

*Denom* (as above).

BEREFORD C.J. What is it to him or to the taking of which he complains, that a return was awarded to you against a strange person (he implied that it had no importance). And therefore do you want to say (something) else?

*Denom.* We say that we took the beasts in the third year etc. in our several etc. Thus etc.

*Herle.* What is that to him? He complains of a taking made on a certain day in the fourth year. Answer to this.

*Denom.* We did not take his beasts on such a day as he has counted, or in such a year, or in such a place. Ready etc. But we took them in such year as we have said.

BEREFORD C.J. With this we have nothing to do, for we do not want to enter on the roll now (anything) of what you took at another time, for as to that he does not complain.

*Willoughby.* We are willing to aver that you took them in the same year and on the same day etc.

Issue joined, etc.

*Denom.* As to William Balger we say that we took his beasts in the third year in our several damage (feasant) etc.

BEREFORD C.J. He does not complain except of the taking in the fourth year.

*Denom.* If we were to deny the taking simply, then they would perhaps have no regard to the time and would pronounce against us. And therefore we pray that it be entered on the roll that we confess the taking in the third year.



*Scrop.* Vous nauerez mye lenroullement ceinz de nulle prise fait etc.

*Den.* Qaunt a William nous dioms qe nous preimes ses auers lan terce etc. vt supra et il fit repleuir etc. et nous feimes remuer la parole etc. par qei etc. le vicounte nous liuera mesme les bestes.

*Wilb.* Coment volletz vous auerrer qe retorn vous feust agarde de mesme les bestes.

*Denom.* Io voille auerrer par record qe retorn me feut agarde etc. et ieo voille auerrer qe la prise e la pleuine furent de mesme les bestes etc. et issint les auoy ioe de la liuere le vicounte et qe autrement ne les pris etc.

*Wilb.* La primere prise ne feut forsqe de deux vaches prest etc. iugement etc.

*Denom vt prius.*

*Et ideo xii.*

## II.<sup>1</sup>

### Trespas.

Vn Richard porta Bref de trespas uers le Priour de Lanc' qe com ne list a nul homme de fere destresse en le Haut estree ne hors de son feo hors pris le roi et ses ministres : mesme cel priour tiel iour tiel lieu. Lan quarte prist j. Boef et ij vaches encountre la ley et la custume etc.

*Denh.* Nous prismes v Boefs et ij vaches tiel iour lan terce en nostre seueral issint qe vn Ad(am) Treuenek fist le pleuine par plainte en counte peus la parole remue en Baunk ou retourn nous fust agarde noun repleuisable par la seconde noun sute de Ad(am) issint sumes seisi des bestes par Iugement et par viconte qe est ministre le roi.

*Scrop.* Vous ditez qe vous les auez del liueree del viconte taunt amounte qe vous ne les pristez pas com nous sumes pleintz. prest dauerrer nostre plainte et qaunt al' Iugement a ceo sumes estraunge et Iugement taille vers estraunge ne vous donne pas gar(antie) de prendre nos auers.

*Denh.* Le Iugement voloms auerrer par record et par pais voloms auerrer qe mesme les auers furent pris en n(ostre) seueral et la pleuine fet de mesmes les auers par Ad(am).

*Herle.* Vous iustefiez vne prise fet lan terce et nous auoms counte dune prise fete lan quarte. responez a ceo.

<sup>1</sup> From X.

*Scrope.* You shall not have the enrolment here of any taking, made etc.

*Denom.* As to Martin we say that we took his beasts in the third year etc. (as above) and he caused them to be replevied etc. and we caused the hearing to be removed etc. wherefore etc. the sheriff delivered to us the said beasts.

*Willoughby.* How do you want to aver that the return of the same beasts was awarded you?

*Denom.* I want to aver by record that the return was awarded me etc., and I want to aver that the taking and the replevin were of the same beasts etc. And thus I had them by the delivery of the sheriff, and (I want to aver) that I did not take them otherwise etc.

*Willoughby.* The first taking was only of two cows. Ready etc. Judgment etc.

*Denom.* (as before).

And therefore twelve.

## II.

### Trespass.

One Richard brought a writ of trespass against the Prior of Launceston, that whereas it is not lawful for anybody, except the king and his ministers, to levy distress in the high street or outside one's fee, that same Prior did on such a day in such a place, in the fourth year, take one ox and two cows, against the law and the custom etc.

*Denom.* We took five oxen and two cows on such a day in the third year in our several, so that one Adam Treuenek made the replevin by complaint in the county. Afterwards the hearing was removed into the Bench, where irreplevisable return was awarded to us by the second non-suit of Adam. Thus we are seised of the beasts by judgment and by the sheriff, who is the king's minister.

*Scrope.* You say that you have them by the delivery of the sheriff; that amounts to this that you did not take them as we have complained. Ready to aver our complaint, and as to the judgment we are strangers to that and a judgment entered against a stranger does not give you a warrant to take our beasts.

*Denom.* We are willing to aver the judgment by record, and we are willing to aver by the country that these same beasts were taken in our several and the replevin of them made by Adam.

*Herle.* You justify a taking made in the third year and we have counted of a taking made in the fourth year. Answer to this.



*Denh.* Tiel iour ne tiel an ne tiel lieu com il ad counte ne prismes pas ses auers.

*Alii econtra.*

*Herle.* La ou il dit qe la prise fust de v. boefs et ij. vaches La prise ne fust fors dun boef et ij vaches prest.

*Alii econtra.*

### III.<sup>1</sup>

<sup>2</sup>Non liceat alicui distr(ictionem) facere extra feodum suum.<sup>2</sup>

Vne<sup>3</sup> I(o)hane<sup>4</sup> porta soun bref fundu sur stat(ut)<sup>5</sup> *non liceat alicui distr(ictionem) facere extra feodum suum nisi nobis* <sup>6</sup>*vel Ministris nostris ad hoc*<sup>6</sup> etc. vers le Priour de Langeton<sup>7</sup> et conta de vne prise fete en C. le lundydy procheyn deuaunt la feste<sup>8</sup> seynt Piere et Paule lan iij etc. et vnqore est seisi et pria<sup>9</sup> la deliueraunce etc.

*Denoun.* Il ne deit la deliueraunce auer ne a cesti bref estre r(eceu) qar la ou il dist qe la destr(esce) fut fete hors de nostre feo etc. la<sup>10</sup> dioms nous qe trouai<sup>11</sup> les auers en nostre seueral dem' (*sic*)<sup>12</sup> fesaunt et<sup>13</sup> nous les primes cum bien nous lust par quei mesme cesti suit la deliueraunce de mesmes les auers et ly furent de liu(ere)s<sup>14</sup> et pledames en counte et par vne *Pone* la paroule remue ceyns a les oct(aves) de seint Mich(el) lan iij a quel iour I(o)h(a)n(e)<sup>15</sup> fist def(aute) par quei retorn nous fut agarde etc. et mesmes les auers a nous par le vic(ounte) liuere.<sup>16</sup> pus I(o)h(a)n(e)<sup>17</sup> suit bref de iugement hors de roules a de liuer(er) mesmes les auers<sup>18</sup> et la deliueraunce par le vic(omte) fete et iour done ala octaue de seint Hill(aire) aquel iour il fut essone et auoit iour par esson(e) <sup>19</sup>deqe a quindene de Pasche<sup>19</sup> a quel iour il fut autre feze<sup>20</sup> noun suwi par quey<sup>21</sup> retorn nous fut agarde noun repleuisable iugement si des<sup>22</sup> auers aueres<sup>23</sup> la deliueraunce.<sup>24</sup>

*Mug.* Vous ne resp(ondistes) pas a v(ost)r(e)<sup>25</sup> (*sic*) plainte qar nous sumus pleint de vne prise fete par vous<sup>26</sup> mesme le<sup>27</sup> iour et leu a qei vous ne resp(ondistes) nient.

*Denoun.* Seyoms prim(e)s a vn sil<sup>28</sup> seit issi com nous dioms<sup>29</sup> ou noun etc.

*Berr.* Respondez al tens de la prise quil vous donent en lour plainte.

<sup>1</sup> From *P.* Compared with *R.*    <sup>2-2</sup> Breve fundatum super statutum *R.*  
<sup>3</sup> Vn *R.*    <sup>4</sup> Iohan *R.*    <sup>5</sup> le statut *R.*    <sup>6-6</sup> Om. *R.*    <sup>7</sup> Lantone *R.*  
<sup>8</sup> Add: de *R.*    <sup>9</sup> priom *R.*    <sup>10</sup> Add: vous *R.*    <sup>11</sup> nous trouames *R.*  
<sup>12</sup> damage *R.*    <sup>13</sup> Om. *R.*    <sup>14</sup> Om. *R.*    <sup>15</sup> il *R.*    <sup>16</sup> deliuiere *R.*    <sup>17</sup> I. *R.*    <sup>18</sup> bestes *R.*  
<sup>19-19</sup> tant qe ala etc. *R.*    <sup>20</sup> autre fethe *R.*    <sup>21</sup> Add: autre fethe *R.*  
<sup>22</sup> de ceux *R.*    <sup>23</sup> deuetz *R.*    <sup>24</sup> Add: auer *R.*    <sup>25</sup> nostre *R.*    <sup>26</sup> In-  
terlined *P.*    <sup>27</sup> certain *R.*    <sup>28</sup> si ceo *R.*    <sup>29</sup> auoms dit *R.*

*Denom.* We did not take his beasts on such a day, or in such a year, or in such a place, as he has counted.

Issue joined.

*Herle.* Whereas he says that the taking was of five oxen and two cows—the taking was only of one ox and two cows. Ready etc.

Issue joined.

### III.

<sup>1</sup>Writ founded upon the statute, 'that it shall not be lawful for anyone to levy distress outside one's fee.'<sup>1</sup>

One William brought his writ founded upon the statute<sup>2</sup> 'that it shall not be lawful for anyone except for ourselves and for our ministers to that etc. to levy distress outside one's fee,' etc., against the Prior of Launceston, and counted of a taking made in C. on the Monday next preceding the feast of SS. Peter and Paul in the fourth year etc. And (he said that the defendant) is still seised. And he prayed the delivery etc.

*Denom.* He ought not to have the delivery, or to be answered to this writ, for whereas he says that the distress was made outside our fee etc., we say that we found the beasts in our several damage feasant, and we took them as well we might, and therefore this same (man) sued the delivery of the same beasts and they were delivered to him, and we pleaded in the county, and by a *Pone* the hearing was removed to this (court) on the octave of Michaelmas in the fourth year, and on that day William made default, wherefore return was awarded to us etc., and the same beasts were delivered to us by the sheriff. Afterwards William sued a judicial writ out of the rolls to deliver the same beasts, and the delivery was made by the sheriff and a day was given on the octave of St. Hilary, and on that day he was essoined and had a day by (his) essoin(er) on the quindene of Easter, and on that day he was again non-suited. Therefore irreplevisable return was awarded to us. Judgment whether you shall have delivery of the beasts.

*Miggeley.* You have not answered to our<sup>3</sup> complaint, for we complained of a taking made by yourselves on a certain<sup>4</sup> day and in a certain place and to that you have not answered.

*Denom.* Let us first be at one whether it be as we have said or no, etc.

BEREFORD C.J. Answer as to the time of the taking, which they put to you in their complaint.

<sup>1-1</sup> This headline is a combination of the headlines in *P.* and *R.*

<sup>2</sup> Stat. Marl. c. 15.

<sup>3</sup> The text has: your.

<sup>4</sup> Supplied from *R.* The main point is that the taking was done, not by the sheriff, but by the defendants themselves.



*Denoun.* Nous ne les primes <sup>1</sup>point tiel<sup>1</sup> iour com vous auez conte etc. ne nul nauoms forqe<sup>2</sup> par liuer(e) de vic(ounte). Prest etc.

*Et alii econtra.*

*Willebi.* Sire<sup>3</sup> nous prioms quil gage la deliuraunce.

*Denoun.* Des bestes qe ieo ne<sup>3</sup> pris pas nauerez point la deliuraunce. ne<sup>4</sup> de ces qe moy<sup>5</sup> furent ag(ardes) noun repleuisable par iugement et<sup>3</sup> a moy liurez par le<sup>3</sup> vic(ounte) ne deuez la de liuraunce auoier<sup>6</sup> (*sic*).

*Berr.* Si troue seit par lenqueste<sup>7</sup> quil les prist dounques auerez la deliuraunce et il sera puny solom ceo qe le trespas le requiert.

Vne<sup>8</sup> Henr(i) porta a<sup>9</sup> tiel bref vers mesme le<sup>10</sup> Priour et ceo pleint de <sup>11</sup>vn autre<sup>11</sup> prise etc.

*Denoun.* Nous trouames voz bestes en nostre seueral dam(age) fesaunt et nous les<sup>12</sup> primes prest<sup>13</sup> etc.

Et lautre fut receu de auerer soun bref.

*Et sic ad patriam.*

Vne<sup>14</sup> Gerueis porta la terce bref<sup>15</sup> de mesme la nature vers mesme le Priour.

*Denoun.* Vn Raufe<sup>16</sup> de Trewynoke<sup>16</sup> suit la deliuraunce de mesmes les auers et auoit etc.<sup>17</sup> taunt pledames<sup>18</sup> ceinz qe par les<sup>19</sup> nonsuite mesme ceci Raufe retorn de mesme les auers nous fut agarde noun repleuisable. iugement etc. *ut supra*.

*Mug.* Nous sumus pleint de les auers Gerueis etc. et vous dites qe Raufe suit la deliuraunce et par la noun suite Raufe retorn etc. et issint ne r(espondistes) nient a nostre pleint. iugement etc.

*Denoun.* Qant home troue bestes en soun seueral dam(age) fesaunt il ne put sau(oir) a <sup>20</sup>qe le proprietes<sup>20</sup> de mesmes les bestes est. si noun par cely qe suit la de liuraunce. et del houre qe Raufe suit la deliuraunce e vous a cel houre ne venistes point ne la<sup>21</sup> properte ne clamastes iugement etc.

*Berr.* Vous pleidez ad diuersa<sup>22</sup> qar il <sup>23</sup>ceo sunt<sup>23</sup> pleint de certeyne tens qaunt<sup>24</sup> la prise fut fete etc. et uous pleidez a vn autre tens et issint

<sup>1-1</sup> pas cel R.    <sup>2</sup> si noun R.    <sup>3</sup> Om. R.    <sup>4</sup> e R.    <sup>5</sup> me R.    <sup>6</sup> au(er) R.  
<sup>7</sup> enqueste R.    <sup>8</sup> Vn R.    <sup>9</sup> au R.    <sup>10</sup> iour cancelled P. cel R.    <sup>11-11</sup> vne R.  
<sup>12</sup> la R.    <sup>13</sup> etc. puis apres vous feites gre pur mesme le trans(gression) issint  
qe vos aueres furent vous deliurez qe autrement ne le prist R.    <sup>14</sup> Vn R.  
<sup>15</sup> iour cancelled P.    <sup>16-16</sup> Treyfenoke R.    <sup>17</sup> Add: E R.    <sup>18</sup> auant  
pledimes R.    <sup>19</sup> la R.    <sup>20-20</sup> qi la proprete R.    <sup>21</sup> Add: deliuerance ne la R.  
<sup>22</sup> adiuerse R.    <sup>23-23</sup> se R.    <sup>24</sup> qe R.

*Denom.* We did not take them on such a day as you have counted etc., nor do we have any(thing) except by the delivery by the sheriff. Ready etc.

Issue joined.

*Willoughby.* Sir, we pray that he wage the delivery.

*Denom.* You shall not have the delivery of beasts which I have not taken, nor ought you to have the delivery of those that were awarded to me by judgment as irreplevisable and were delivered to me by the sheriff.

BEREFORD C.J. If it be found by the inquisition that he took them, then you shall have the delivery and he will be punished according to how the trespass deserves.

One William Balger brought such<sup>1</sup> a writ against the same Prior and complained<sup>2</sup> of another taking etc.

*Denom.* We found your beasts in our several damage feasant and we took them. Ready etc.

And the other was received to aver his writ.

And thus to the country.

One Martin brought the third writ of the same nature against the same Prior.

*Denom.* One Ralph of Trewynoke sued the delivery of these same beasts and had etc. We pleaded here until by the non-suit of that same Ralph there was awarded to us the irreplevisable return of those same beasts. Judgment etc. (as above).

*Miggeley.* We have complained as to the beasts of Martin etc. and you say that Ralph sued the delivery and by the non-suit of Ralph the return etc. And thus you have not answered to our complaint. Judgment etc.

*Denom.* When one finds beasts in one's several, damage feasant, one cannot know to whom the property of those beasts belongs, except (that one has to suppose that it belongs) to him who sues the delivery. And since Ralph sued the delivery and you have not up to this hour come or claimed the property, judgment etc.

BEREFORD C.J. You plead to different issues, for they complained as to a certain time on which the taking was done, and you plead as to

<sup>1</sup> This translation seems justified, word (*autiel*).  
if we read *au* (as in *R*) for *a* (as in *P*),  
and if we take it that *au tiel* is one

<sup>2</sup> *ceo pleint* obviously stands for  
*se pleint*.



nestes<sup>1</sup> pas a vn de nul certain tens et pur ceo al tens r(esponez)<sup>2</sup> quil vous done en sa plainte <sup>3</sup>qar il nad rien a respond(re) al tens Raufe qest vn estrange persone nient nome en sa plainte.<sup>3</sup>

*Denoun.* Qe tiel iour ne tiel<sup>4</sup> leu com il se pleint ne primes point ces auers prest etc.

*Et alii econtra.*

*Ideo*<sup>5</sup> etc.

#### IV.<sup>6</sup>

*Nota.*

*Nota* qe la ou vn bref fonde sur lestat(ut) fu porte vers vn hom qe ne list a nul hom destr(ere) hor de son fee etc. et il r(espoundist) et dist qil prist mesme les bestes en son seueral dam(age) fesaunt et illes auoit repleui et la parole remue par le *recordari* et fu nounsuy par qey retourn fu agarde et il suist bref de iugement hor de roul(es) al vesc(ounte) dauoir altre foiz la deliuerance issi qil pleder(ont) et altre foiz auoit retour neient repleuisable par agarde de court et en tele man(ere) fu seisi de mesme les bestes dount il se pleynt. Et il ne fu pas receu a tel r(espounse) saunz dire qil suist bref al vesc(ounte) dauoir le retour neient repleuisable qe de sa prise demeyne saunz liuere del vesc(ounte) il sereit chase de r(espoundre).

#### V.<sup>7</sup>

*Replegiare.*

*Nota* vn home counta vers vn priour qil prist sez auers hors de soun fee certeyn iour an et leu.

*Denom.* Nous ne primes pas sez auers en tel leu ne tel an prest etc.

#### Notes from the Record.

##### I.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 166 recto. Cornwall.  
Written by Luding<sup>8</sup>.

Rogerus Prior de Lanceuetone, Thomas le Chaunceller et Robertus Tryplot in misericordia pro pluribus defaltis.

Idem Prior Thomas et Robertus attachiati fuerunt ad respondendum Willelmo Walter de Tremur de placito quare cum de communi consilio regni

<sup>1</sup> *Add*: vous *R.*

<sup>2</sup> In *R* r(esponez) comes after pur ceo.

<sup>3-3</sup> *Om. R.*

<sup>4</sup> *Add*: an ne tiel *R.*

<sup>5</sup> *Om. R.*

<sup>6</sup> From *E.*

<sup>7</sup> From *C.*

a different time, and thus you are not at one as to any certain time. And therefore answer as to the time which he puts to you in his complaint. For he has not at all to answer as to the time (of the taking of the beasts) of Ralph who is a strange person not named in his complaint.

*Denom.* Ready etc. that we did not take his beasts on such a day or in such a place as he complains.

Issue joined.

Therefore etc.

#### IV.

Note.

Note that a writ founded upon the statute<sup>1</sup> that it shall not be lawful for anyone to distrain outside one's fee was brought against one etc., and he answered and said that he took these same beasts in his several damage feasant, and that (the other) had them replevied and the hearing was removed by a *recordari* and (the other) was non-suited; wherefore a return was awarded, and he sued a judicial writ to the sheriff out of the rolls, to have once more the delivery, so that they pleaded and another time he had irreplevisable return by award of court: and in this way was he seised of these same beasts of which he complains. And he was not received to such an answer, without saying that he sued a writ to the sheriff to have irreplevisable return. For he would be driven to answer for his own taking (if it had been) without delivery by the sheriff.

#### V.

Replevin.

Note one counted against another that he took his beasts outside his fee on a certain day in a certain year and place.

*Denom.* We did not take his beasts in such a place or in such a year. Ready etc.

#### Notes from the Record.

##### I.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 166 recto. Cornwall.  
Written by Luding'.

Roger, Prior of Launceston, Thomas the Chancellor, and Robert Tryplot in mercy for several defaults.

The same Prior, Thomas, and Robert were attached to answer William Walter of Tremur<sup>2</sup> in a plea why, whereas by the common council of the

<sup>1</sup> Stat. Marl. c. 15.

<sup>2</sup> In Treviniek (*Feudal Aids*, i, 636).



Notes from the Record—*continued*.

Regis prouisum sit quod non liceat alicui districciones facere extra feodum suum neque in Regia aut communi strata nisi ipsi Regi et Ministris suis specialem autoritatem ad hoc habentibus predicti Prior Thomas et Robertus simul cum Iohanne Baudyn de Treworghel Baldewyno de Langedone Thoma Bonseriaunt et Nicholao Monka qui Ministri Regis non sunt vt dicitur aueria ipsius Willelmi extra feodum suum apud La Donne contra formam prouisionis predictae ceperunt et imparcauerunt et ea adhuc imparcata detinent contra legem et consuetudinem regni Regis et contra pacem etc Et vnde idem Willelmus queritur quod predicti Prior et alij simul etc die Lune proxima ante festum Apostolorum Petri et Pauli anno regni domini Regis nunc quarto apud Tremur in quodam loco qui vocatur la Donne extra feodum suum contra formam prouisionis predictae ceperunt duos boues et quinque vaccas ipsius Willelmi et eos imparcauerunt et adhuc imparcata detinent contra legem et consuetudinem etc et contra pacem etc. vnde dicit quod deterioratus est et dampnum habet ad valenciam decem librarum. Et inde producit sectam etc Et petit quod vad(iat) ei deliberacion(em) etc.

Et Prior et alij per attornatum suum veniunt Et defendunt vim et iniuriam qu(ando) etc et quicquid est contra pacem etc. Et vbi predictus Willelmus queritur quod predicti Prior et alij predicto die Lune ceperunt predicta aueria ipsius Willelmi : Prior dicit quod predictus Willelmus iniuste queritur in hac parte Dicit enim quod placitum fuit inter ipsum Willelmum querentem et prefatum Priorem de aueriis ipsius Willelmi que predictus Prior ante predictam diem Lune ceperat in Kenrosdoun in dampno suo, Ita quod postquam adiudicatum fuisset eidem Priori in Curia hic returnum aueriorum per defaultam ipsius Willelmi vna vice, et postmodum predictus Prior attachiatus fuisset per breue de iudicio eidem Willelmo de eadem capcione respons(urus) : idem Willelmus iterato fecit defaultam in eadem Curia hic, per quod adiudicatum fuit eidem Priori returnum aueriorum irreplegiandorum iuxta formam statuti, Ita quod idem Prior secutus fuit breue vicecomiti quod aueria illa eidem Priori returnari faceret in forma predicta : qui quidem vicecomes per quendam ballium suum liberauit eidem Priori predictos duos boues et quinque vaccas, de quibus idem Willelmus modo queritur etc et ita habuit idem Prior aueria illa per liberacionem balliui domini Regis etc nec aliqua alia aueria ipsius Willelmi cepit idem Prior predictis die et anno sicut ei imponitur Et de hoc ponit se super patriam etc.

Et predicti Thomas et Robertus bene concedunt quod ipsi venerunt cum predicto balliuo domini Regis et predictae liberacioni predictorum aueriorum interfuerunt cum ipso, absque hoc quod ipsi aliquam capcionem seu transgr(essionem) extra feodum suum fecerunt contra pacem etc. Et de hoc ponit (*sic*) se super patriam etc.

Et Willelmus dicit reuera quod placitum fuit inter eos hic in Curia de

Notes from the Record—*continued*.

King's realm it is provided that it shall not be lawful for anyone, save the King himself and his ministers having special authority therefor, to levy distresses outside one's fee or on the King's street or a common street, (yet) the said Prior, Thomas, and Robert, together with John Baudyn of Treworghel, Baldwin of Langdon, Thomas Bonseriaunt, and Nicolas Monka, who are not the King's ministers, as is said, took the beasts of the said William outside their fee, at La Donne, against the form of the said provision, and imparked them and until now detain them imparked, against law and custom of the King's realm and against the peace etc. And concerning this matter the said William complains that the said Prior and others together etc., did on (June 28, 1311) the Monday next preceding the feast of the Apostles Peter and Paul, in the fourth year of the reign of our Lord the present King, at Tremur in a place which is called La Donne, outside their fee, against the form of the said provision, take two oxen and five cows of the said William and imparked them and until now detain them imparked against law and custom etc. and against the peace etc. whereby he says that he has suffered loss and has damage to the amount of £10. And as to this he produces suit etc. And he prays that they gage him the delivery etc.

And the Prior and the others come by their attorney, and deny force and wrong when etc. and whatever is against the peace etc. And whereas the said William complains that the said Prior and the others took on the said Monday the beasts of the said William: the Prior says that the said William unjustly complains in this respect, for he says that there was a plea between the said William, the complainant, and the said Prior as to the beasts of the said William, which the said Prior had taken before the said Monday at Kenrosdoun in his damage, so that after there had been adjudged to the said Prior in this Court a return of the beasts by default of the said William made once, and (after) the said Prior had afterwards been attached by judicial writ to answer the same William for the same taking: the same William did again make default in this same Court, wherefore an irreplevisable return of the beasts was adjudged to the said Prior according to the statute.<sup>1</sup> So that the said Prior sued a writ to the sheriff that he cause those beasts to be returned to the said Prior in the said form; and the said sheriff did by one, his bailiff, deliver to the said Prior the said two oxen and five cows, as to which the said William now complains etc. And thus has the said Prior had those beasts by delivery of our Lord the King's bailiff etc., and the said Prior did not on the said day and in the said year take any other beasts of the said William as he is charged (with having done). And as to this he puts himself upon the country etc.

And the said Thomas and Robert fully grant that they came with the said bailiff of our Lord the King and took part in (*interfuerunt*) the said delivery of the said beasts with him, without doing any taking or trespass outside their fee against the peace etc. And as to this they put themselves upon the country etc.

And William says indeed that there was in this Court a plea between them

<sup>1</sup> Stat. Westm. II, c. 2.



Notes from the Record—*continued*.

aueriis ipsius Willelmi prius captis, set dicit quod post returnum inde adiudicatum prefato Priori per defaltam etc vt predictum est, returnate fuerunt predicto Priori nisi due vacce tantum de quibus predictus Willelmus modo non queritur, set dicit quod predicti Prior Thomas et Robertus preter illas duas vaccas prius captas et in forma predicta returnatas : predictis die et anno ceperunt duos boues et quinque vaccas ipsius Willelmi in predicto loco extra feodum suum contra formam prouisionis predictae et contra pacem etc sicut queritur Et hoc petit quod inquiratur per patriam.

Et Prior et alij similiter.

Ideo preceptum est vicecomiti quod venire faciat hic a die Pasche in xv dies xii etc per quos etc Et qui nec etc Quia tam etc.

## II.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 166 verso. Cornwall.  
Written by Luding'.

A record of a case in which the same defendants are attached to answer Willelmo Balger de Tremur. The first part of the record is similar to that in the former case, except that the complaint is as to the taking of seven oxen and two cows. But after the complaint is set out, up to 'Et petit quod vadiat ei deliberacionem etc.,' the record proceeds :

Et Prior et alii per attornatum suum veniunt Et defendunt vim et Iniuriam qu(ando) etc Et bene defendunt quod ipsi nunquam predictis die et anno ceperunt predicta aueria contra pacem etc sicut predictus Willelmus ei imponit Et de hoc ponit (*sic*) se super patriam.

Et Willelmus similiter.

Ideo preceptum est vicecomiti quod venire faciat hic a die Pasche in xv dies xii etc per quos etc Et qui nec etc Quia tam etc.

## III.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 166 verso. Cornwall.  
Written by Luding'.

A record of a case in which the same defendants are attached to answer Martino de Tremur. The record is practically identical with that in the case set out under (II), except that the complaint is as to the taking of six oxen and three cows 'apud Tremur in quodam loco qui vocatur Holeweye.'

*Notes from the Record—continued.*

as to the said William's beasts which had formerly been taken, but he says that after the return thereof adjudged to the said Prior by the default etc., as has been said above, there were returned to the said Prior only two cows as to which the said William does not now complain, but he says that the said Prior, Thomas, and Robert, apart from those two cows which had formerly been taken and which were returned in the aforesaid form, on the day and in the year aforesaid did take two oxen and five cows of this William in the said place outside their fee, against the form of the said provision and against the peace etc. as he complains. And he prays that this be inquired by the country.

And the Prior and the others likewise.

Therefore the sheriff was commanded that he cause to come here on the quindene of Easter twelve etc. by whom etc. And who are neither etc. Because both etc.

## II.

**De Banco Roll 195a, Mich. 6 Edw. II., membr. 166 verso. Cornwall.  
Written by Luding'.**

A record of a case in which the same defendants are attached to answer William Balger of Tremur. The first part of the record is similar to that in the former case, except that the complaint is as to the taking of seven oxen and two cows. But after the complaint is set out, up to 'And he prays that they gage him the delivery etc.,' the record proceeds:

And the Prior and the others come by their attorney, and deny force and wrong when etc. And they entirely deny that they ever did take on the said day and in the said year the said beasts against the peace etc., as the said William charges (them with having done). And as to this they put themselves upon the country.

And William likewise.

Therefore the sheriff was commanded that he cause to come here on the quindene of Easter twelve etc. by whom etc. and who are neither etc. Because both etc.

## III.

**De Banco Roll 195a, Mich. 6 Edw. II., membr. 166 verso. Cornwall.  
Written by Luding'.**

A record of a case in which the same defendants are attached to answer Martin of Tremur. The record is practically identical with that in the case set out under (II), except that the complaint is as to the taking of six oxen and three cows 'at Tremur in a place which is called Holeweye.'



38. SAXLINGHAM *v.* ATTEWODE AND OTHERS.<sup>1</sup>I.<sup>2</sup>

Trans(gression).

Symond<sup>3</sup> le fiz Adam de Saxlingham<sup>4</sup> porta soun bref de trespas<sup>5</sup> vers Martin le fiz Raufe atte Wode de Torpmarche<sup>6</sup> etc. et counta qe Martyn a force et as armes prist quoddam lumentum<sup>7</sup> precieu(m) v Marcarum apud Saxlingham<sup>4</sup> etc. et alia bona etc. ad valenciam etc.

*Pass.* defendist et qant al venire aforce et<sup>8</sup> as armes et a<sup>8</sup> lenporter des chateus. de rien coupable. E qant ala lumente. nous dioms qe le counte de Garenne si tient le Houndr(ede) de Brothercros.<sup>9</sup> en feo ferme<sup>10</sup> de nostre seignur le Roi issint qe vn Thomas Miles se at(a)ch(a) de seure vers . . .<sup>10</sup> qe ore se pleint. en plee de trespas<sup>5</sup> en le Hondrede auaundit par quei mesme cesti Simod (*sic*) fut sum(one) de estre al prochein Houndrede a respondre a le auaundit Thomas a quel H.<sup>11</sup> Symond ne vient point. par quei fut agarde quil fuit atache. destre etc.<sup>12</sup> et apres latachement<sup>12</sup> ne vint point etc. par quei fut agarde quil fuit destr(eint) destre al Houndrede tenu a certain iour a respoundre etc. dount mesme cesti Martyn prist cele lumente en noun de destr(esce) com Baillif le Counte etc. qe autrement ne la prist prest etc.

*Denoun.* Nous auoms counte qe vous entrates nostre clos. et pristes la lumente<sup>13</sup> en cele entrer et la price furent fetes<sup>13</sup> saunz garrantie et contre<sup>14</sup> ley et uous a cel rien r(espondez) iugement etc.

*Herle.* Vostre bref ne voit point qe nous entrames vostre clos et si<sup>15</sup> uous vssez counte. vn tiel conte com<sup>16</sup> nous entrames etc. le bref ne serreit mye garr(aunt) de le Counte et par taunt serreit vostre plainte vic(i)onus(e)<sup>17</sup> etc.

*Denoun.* Il a<sup>18</sup> prist en le lieu ou nous sumes pleint hors del feo. et de la seignurie le Counte en le Houndrede de Holt. qest en la mayn nostre seignur le Roi aforcee et as armes. et a<sup>19</sup> countre la pees. com nostre bref veit. prest etc. iugement si uous hors de vostre feo puissez tiel<sup>20</sup> auowrie fere.<sup>20</sup>

*Pass.* Dounqe grantez bien la cause de la price.

*Denoun.* Uous face einz bie par taunt maintenir moun bref.

<sup>1</sup> Reported by *C, E, F, G, P, R, T, X.*    <sup>2</sup> From *P.* Compared with *R.*  
<sup>3</sup> Simond *R.*    <sup>4</sup> Saxingham *R.*    <sup>5</sup> trans(gression) *R.*    <sup>6</sup> Thorpemarche *R.*  
<sup>7</sup> Add: ipsius Simonis *R.*    <sup>8-8</sup> etc. *R.*    <sup>9</sup> Brothers *R.*    <sup>10-10</sup> de aferma de syure uers Simond *R.*    <sup>11</sup> hundred *R.*    <sup>12-12</sup> par quel attachement il *R.*  
<sup>13-13</sup> al entre de la prise fut fet *R.*    <sup>14</sup> encontre commune *R.*    <sup>15</sup> Om. *R.*  
<sup>16</sup> qe *R.*    <sup>17</sup> visious *R.*    <sup>18</sup> la *R.*    <sup>19</sup> en *R.*    <sup>20-20</sup> destresce avower *R.*

38. SAXLINGHAM *v.* ATTEWODE AND OTHERS.

## I.

## Trespass.

Simon the son of Adam of Saxlingham brought his writ of trespass against Martin the son of Ralph Attewode of Thorpe Market etc., and counted that Martin with force and arms took at Saxlingham a mare worth five marks etc. and other goods etc. to the amount etc.

*Passeley* defended and as to the coming with force and arms and carrying off of chattels (pleaded) not guilty, and as to the mare (he said): we say that the Earl of Surrey holds the hundred of Brother Cross in fee ferm of our Lord the King, and one Thomas Miles attached himself to sue against Simon<sup>1</sup> who now complains, in a plea of trespass, in the said hundred. Therefore this same Simon was summoned to be at the next hundred to answer the said Thomas. And to that hundred Simon did not come, wherefore it was awarded that he be attached to be etc. And after the attachment he did not come etc., wherefore it was awarded that he be distrained to be at the hundred held on a certain day to answer etc. And therefore this same Martin took that mare in the name of distress as bailiff of the Earl etc. Ready (to aver) that he did not take it otherwise etc.

*Denom.* We have counted that you entered our enclosure and took the mare during that entering and the taking was done without warrant and against the law. And you answer nothing to that. Judgment etc.

*Herle.* Your writ does not at all say that we entered your enclosure and if you had counted such a count (namely,) that we had entered etc., the writ would be no warrant for such a count and in so far would your complaint be defective etc.

*Denom.* He took in the place in which we complained, outside the fee and the seignory of the Earl, in the hundred of Holt, which is in the hand of our Lord the King,<sup>2</sup> (and he took there) by force and arms and against the peace, as our writ says. Ready etc. Judgment whether you can make such an avowry (as to a taking) outside your fee.

*Passeley.* Then you fully grant the cause of the taking?

*Denom.* Let (that) be done to you. But I want thereby to maintain my writ.<sup>3</sup>

<sup>1</sup> Supplied from *R.*

<sup>2</sup> Saxlingham was in the Hundred of Holt (*Feudal Aids*, iii, 402, 461), but this hundred was in the hands of Sir John of Clavering in 1316 (*ibid.* 461).

<sup>3</sup> This is a difficult passage. It

may mean: 'Let your wish be fulfilled in this respect. I shall maintain my writ.' Or else: 'You would like to be in. I maintain my writ' (*cf.* Bereford's remark at the end of Version VI).



*Herle.* Si vous pledez aleu, dounqe seoms a vn de la prise. qar soit le leu hors del houndrede ou deinz si la prise fut fete auxi com nous dioms. ley de tere nous excuse<sup>1</sup> de venir aforce et a armes. qest raunsoun. et en prisonnement sil fuit troue. et de la torsinounce<sup>2</sup> price seulement forqe amercimens. E de autrepert : vous ditez qe la prise fuit fete. hors de nostre feo. et de nostre seignurie etc. sire en tiel cas ci est certeyn remedie ordeine. et ce(r)teyn bref *scilicet*<sup>3</sup> *ne quis distringat extra feodum suum* par quel bref il pureit trier la prise dreiturele. ou torcinouse.<sup>2</sup> et noun point par cesti bref de trespas<sup>4</sup> etc. par quei nous demandoms iugement si a cesti bref deieue estre r(espondu) sanz r(espondre) ala cause de la prise.

*Pass. ad idem.* Bref de trespas<sup>4</sup> ci gist en cas. ou cely vers qi le bref est porte cleime proprete en chateus des queus le bref est porte. dount de puis qe nous ne clamoms riens en til<sup>5</sup> chateus etc. einz auoms auowe la prise de mesme le chatel pur certeyne cause qe excuse nostre persone. de choce fete en countre la pees e il plede al leu ou la prise fut fete en supposaut la cause estre verreie. si le leu fuit deinz nostre feo par quei nous demandoms iugement de cel bref qe nè gist point en tiel<sup>5</sup> cas.

*Berr.* Sil fut troue qe la iumente fut pris hors de vostre feo auxi com il dist. ne fut donqe la prise fete contre la pees. *quasi diceret sic.*

*Pass.* Sire noun qar si troue fust qe nous la primes. sur la cause auaundite. il ne sereit reint nenprisonne mes taunt seulement amercie par quei il me semble quil deit tranuerser la cause de nostre auoier(ie).

*Heruy.* Le leu ou<sup>6</sup> la prise nest mye tranuersable en cesti bref qe prent issue par raunsoun<sup>7</sup> et enprisonnement.

*Berr.* Nient<sup>8</sup> home porte soun *Replegiari* la ou il poet vser bref de trespas.<sup>9</sup> sil vousit mes pur ceo quil put plus tost auenir a ces chateus par le *replegiari* il prent sel bref. et lest<sup>10</sup> lautre bref de trespas<sup>9</sup> qe ly supposereit estre hors de la proprete.

*Malm.* Qant home avowe proprete de chatel dounqe ne gist pas le *replegiari*. einz sera chace a autre recouer par quei del houre qe nous

<sup>1</sup> oste *R.*    <sup>2</sup> torsinouse *R.*    <sup>3</sup> etc. set *R.*    <sup>4</sup> trans(gression) *R.*    <sup>5</sup> cel *R.*  
<sup>6</sup> de *R.*    <sup>7</sup> etc. *R.*    <sup>8</sup> meint *R.*    <sup>9</sup> trans(gression) *R.*    <sup>10</sup> est lun et *R.*

*Herle.* If you plead as to the place, then let us be at one as to the taking. For whether the place be outside the hundred or inside, if the taking was done as we say, then the law of the land excuses<sup>1</sup> us from coming with force and arms (which would mean ransom and imprisonment if we were found guilty of it) and (threatens us) only with amercement for wrongful taking. And on the other hand you say that the taking was made outside our fee and our seignory etc. Sir, there is a certain remedy ordered for cases like that, and a certain writ, namely, 'that no one distrain outside one's fee,'<sup>2</sup> and it is by that writ that he could have it tried whether the taking was lawful or wrongful,—and not by this writ of trespass etc. Therefore we demand judgment whether he ought to be answered to this writ without answering to the cause of the taking.

*Passeley* (to the same purpose). A writ of trespass lies in a case where he against whom the writ is brought claims property in the chattels for which the writ is brought. However, we claim nothing in these chattels etc., but we have avowed the taking of this same chattel for a certain cause which excuses our person from having done anything against the peace; he pleads as to the place where the taking was made, thus supposing that if the place were within our fee then the cause would be true. Therefore we demand judgment of this writ which does not lie in this case.

BEREFORD C.J. If it were found that the mare was taken outside your fee, as he says, would not then the taking be against the peace? (he implied that it would be).

*Passeley.* No, Sir, for if it were found that we take it for the aforesaid cause, he (the defendant) would not be ransomed<sup>3</sup> or imprisoned, but only amerced. Therefore it seems to me that he ought to traverse the cause of our avowry.

STANTON J. The place where the taking (was made) is not traversable in this writ, which ends by ransom and imprisonment.

BEREFORD C.J. Some(times) one brings one's *replegiare* where one could have used a writ of trespass if one had wished, but one takes this writ because one can come quicker by one's chattels by the *replegiare*. And (both one and<sup>4</sup>) the other are writs of trespass, which would suppose him to be out of property.

*Malberthorpe.* When one avows property of a chattel then the *replegiare* does not lie, but (the plaintiff) will be driven to another (way

<sup>1</sup> *I.e.* The law will not allow us to be prosecuted for coming with force and arms.

<sup>2</sup> Based on Stat. Marl. c. 15.

<sup>3</sup> The context shows that 'ransomed' was meant, but the text has 'reint.'

<sup>4</sup> Supplied from *R.*



auoms auowe la prise et sur certeyne cause. nient clam(ant) proprete etc. sisemble il a moy qe cesti bref ne gist point.

*Denoun.* Nous auoms dist qe la prise fut fete hors de lour feo. a qei il ne respond nient iugement.

*Berr. et<sup>1</sup> Mal.<sup>2</sup>* Respondez outre.

*Mal.* Qe nous primes la lumentie en noun de destr(esce) en le Houndr(ede) de B. auxi com nous auoms dist et noun pas a force et a armes prest etc.

*Denoun.* Qe uous la preistes a force etc.<sup>3</sup> en le Houndr(ede) de Holte prest etc.

<sup>4</sup>*Ideo preceptum est vicecomiti quod venire faciat etc.<sup>4</sup>*

Inquisicio

## II.<sup>5</sup>

### Transgression.

Vn hom porta vn bref de transgression vers vn altre et dist qe a tort prist la sue lumentie certeyn iour an et leu a force et armes. et countre la pees. e leu chasa etc.

*Herle.* Nous sumes le Bailife le Count de Garrenne del hundred de B. issi qe vn hom se attacha de suyre vers luy en plei de transgression en le dist Hundred. issi qil fu som(one) et ne vint pas par qey fu agarde qil fu mis par gage et pleg(es) de estre al hundred suaunt a quel iour il ne vint pas par qey fu agarde qil fu destr(eint) par la grant destr(esce) et issi preigmes la lumentte od la pees. com Bailife le dist Count et nemye countre la pees.

*Denum.* La ou il dit qe vn A. se attacha de suyre vers nous en le Hundred de B. par qey nous fumes somone et pus par nostre defaute fumes mis par gage et pleg(es) et pus destr(eint) par la grant destresce par qey com Bailife etc. il fist la destr(esce) od la pees et nemye countre la pees. vous dioms qe la destr(esce) fu faite en le hundred de R. contre la pees etc. qest hor de son fee et de sa seignurye et cel sumes prest dauerrer et demandoms iugement si tele destr(esce) poet estre auowable.

*Herle.* Dunke conisetz vous qe la grant destresce fu agarde.

<sup>1</sup> *Corr. a. Om. R.*    <sup>2</sup> *Om. R.*    <sup>3</sup> *et as armes R.*    <sup>4-4</sup> *Om. R.*    <sup>5</sup> *From E.*

of) recovering. Therefore since we have avowed the taking, and for a certain cause, not claiming the property etc., it seems to me that this writ does not lie.

*Denom.* We have said that the taking was made outside their fee. And to that he does not answer. Judgment.

BEREFORD C.J. to<sup>1</sup> *Malberthorpe*. Answer over.

*Malberthorpe*. Ready etc. that we took his mare in the name of distress in the hundred of Brothercross, as we have said, and not by force and arms. Ready etc.

*Denom.* Ready etc. that you took it by force etc. in the hundred of Holt. Inquest.

Therefore the sheriff was commanded that he cause to come etc.

## II.

### Trespas.

A man brought a writ of trespass against another and said that he had wrongfully taken his mare on a certain day in a certain year and place, with force and arms and against the peace and drove (it<sup>2</sup>) etc.

*Herle.* We are the bailiff of the Earl of Surrey, of the hundred of Brothercross, and a man attached himself to sue against him (the plaintiff) in the said hundred, in a plea of trespass, and he was summoned and did not come; therefore it was awarded that he be put by gage and pledges to be at the following hundred; and on that day he did not come, wherefore it was awarded that he be distrained by the grand distress. And thus we took the mare within the peace, as bailiff of the said Earl, and not against the peace.

*Denom.* Whereas he says that one A. attached himself to sue against us in the hundred of Brothercross, wherefore we were summoned and afterwards, by our default, we were put by gage and pledges and then distrained by the grand distress, wherefore as bailiff etc. he levied the grand distress within the peace and not against the peace,—we tell you that the distress was levied in the hundred of (Holt) against the peace etc., and (that hundred) is outside his fee and his seignory. And this we are ready to aver, and we demand judgment whether such a distress can be avowable.

*Herle.* Then you do admit that the grand distress was awarded?

<sup>1</sup> This seems more reasonable than  
'and.'

<sup>2</sup> This seems the correct translation  
of *leu*



*Denum.* Ieo ney mye mest(ier) de cel conoistre depus qe vous auetz pris la beste hor de vostre fee et vostre seignurye et voloms auerer qe countre la pees auxi come nostre bref suppose et a chacer nous a granter ou a desdire la cause de la prise depus qe la prise fu fait hor de cel hundred et vostre fee nentendoms pas qe la Court nous chacera et demandoms iugement.

*Herle.* Si nous auoms destr(eint) hors de nostre fee la auetz naturellement vostre recouerer ordine par bref forme sur statut et la ou nous auoms destr(eint) par verrei cause le quel qe se seit deynz nostre fee ou hor de nostre fee vous ne peetz neient meyntener la prise estre fait countre la pees et vostre bref le suppose et vous ne poetz desdire la cause de la prise qe si vous le voletz nous le voloms auerer et demandoms iugement si a tel bref deyuent il estre receu.

*Denum.* Nous vous dioms qe vous preistes la beste hor de cel hundred. qest hor de vostre fee et de vostre seignurye et countre la pees auxi com nostre bref suppose iugement.

*Herle.* Si vous fussetz receu a tel issue de pleee si pledretz vous la nature de vn *replegiari* et cest vn bref de transgression et auoms dit qe la prise se fist pur certeyne cause done par agarde de Court, la quele cause proue la prise neient estre faite countre la pees. et vostre bref le suppose iugement.

*Ber.* Hor de vostre iuresdiccioun et vostre poer vous ne poetz faire nule prise ne nule destresce par nule cause et il vous dist qe vous la preistes hor de vostre hundred et cel voet il auerer.

*Tou.* Cel sereit de pleder al. leu. qe ne poet en cesti bref de transgression estre plede qe qant il plede al leu il ne poet mye meyntenir la prise estre faite a force et armes et countre la pees. qe cel ne sereit mye issue a cesti bref a dire il la prist a force et armes et countre la pees. hor de son fee.

*Herle.* Nous voloms auerer qe nous la preigmes pas hors de nostre hundred a force et armes ne countre la pees.

*Ber.* Cest vn bref de transgression ou il couent ioindre auerement auxi come apent mes si troue seit qe vous la preistes par cause et nemye

*Denom.* I need not admit this since you took the beast outside your fee and your seignory, and we are willing to aver that (it was) against the peace as our writ supposes. As for driving us to grant or to deny the cause of the taking, we do not think that the Court will drive us, since the taking was done outside of that hundred and of your fee. And we demand judgment.

*Herle.* If we have distrained outside of our fee, then you have by the nature of things your recovery ordained by a writ formed upon the statute,<sup>1</sup> and if we have distrained for a good<sup>2</sup> cause, then, whether that be within our fee or outside of our fee, you cannot maintain that the taking was done against the peace, and your writ supposes that, and you cannot deny the cause of the taking, for if you want to do that we are willing to aver it. And we pray judgment whether they ought<sup>3</sup> to be received to such a writ.

*Denom.* We tell you that you took the beast outside of that hundred, and that is outside of your fee and of your seignory, and against the peace just as our writ supposes. Judgment.

*Herle.* If you were received <sup>4</sup>to such an issue of the plea<sup>4</sup> then you would plead in the nature of a *replegiare*, and this is a writ of trespass, and we have said that the taking was done for a certain cause which was given by award of Court, and that cause proves that the taking was not done against the peace. And your writ supposes (that it was done against the peace). Judgment.

BEREFORD C.J. You cannot do any taking or levy any distress outside of your jurisdiction and of your power, for any cause (whatsoever). And he tells you that you took (the mare) outside of your hundred. And he is willing to aver this.

*Toudeby.* That would mean pleading as to the place, and such a plea cannot be pleaded in this writ of trespass. For when he pleads as to the place he cannot maintain that the taking was done by force and arms and against the peace. For it would not be (a proper) issue (to join) in this writ, (if one were) to say that he took it with force and arms and against the peace outside of his fee.

*Herle.* We are willing to aver that we did not take it outside of our hundred, or by force and arms, or against the peace.

BEREFORD C.J. This is a writ of trespass, in which it is necessary to join the averment just as it <sup>5</sup>follows logically,<sup>5</sup> but if it were found that you took it for a (good) cause and not against the peace outside

<sup>1</sup> Stat. Marl. c. 15.

<sup>2</sup> The text has 'true.'

<sup>3</sup> The pronoun in the French text stands in the singular, the verb in the plural. The diversity seems due to

misspelling.

<sup>4-4</sup> *I.e.* (probably) to take issue in this plea on a point like this.

<sup>5-5</sup> *come apent.*



countre la pees hor de vostre fee par auenture vous seretz allegge de la penaunce qe vous sereit enioynte com denprisonment et en raunsoun si le reuers fu troue etc.

### III.<sup>1</sup>

<sup>2</sup>De Trespas ou le defendant auoua en certyn leu qe fut trauerse et dit fut qe a ceo ne deit il estre receu qar a pleder le leu ou la res . . . etc. ceo sereit a pleder le plee qe naturelement chet en *Replegiari*. qest dautre nature qe cest etc.<sup>2</sup>

Vn Ion porta soun bref de trespas vers vn Adam et counta qe a tort vynt certain ior an et lu a forse et as armes. et illuqe prist et enporta vne sa lumentie pris de x. s. et la mena et autrez chateus a la vaillaunce de xl. s. prist en<sup>3</sup> enporta a tort et en contre la pees etc. et ces damages.

*Mig.* defendist et dit qe Adam est ballif aconté<sup>4</sup> de garr(enne) dil Hundred de E.<sup>5</sup> e dit qun Richard vynt certeyn ior et se atacha de suire vers mesme cesti Ion en plee de trespas <sup>6</sup>agarde fut qil<sup>6</sup> fut somone pus atache. et pur ceo qil fit defaute agarde fut qil fut destr(eint) et il dit qil prist cele lumentie en noun de destresce oue la pees. et nent encountre la pees cum baillife etc. Et qant a les autres chateus il vous dit qil ne les prist pas etc. pret.

*Denom.* Vous conusset la prise. mes vous auowet par cause etc. nous voloms auerer qe le leu ou vous les preytes si est hors de la purceynte etc.<sup>7</sup>

*Pass.* Vous nauendret my a trauerser le lu. qar vostre pleynte veet<sup>8</sup> qe nous preymes la lumentie a force et encountre la pees. et a ceo auoms dit qe nent en countre la pees einz oue la pees. et auoms dit cause a qi vous ne poet autre chose dire qe meyttenir vostre bref car a pleder le leu ou la prise fut fete seit deinz nostre iurediccion ou ne mye. ceo seroit pleder le plee qe naturelement chet<sup>9</sup> en le *Replegiare*. et si vous volet cele voie nous demandoms iugement du bref.

*Denom.* Ma accioun est dun trespas en countre la pees. et qant a vostre auouerie si ay ieo dit a meygnetener moun bref. qe le leu etc. est hors de vostre iurediccion. et ensy pursywe maccioun.

*Herle.* Qant il porte soun bref de trespas il suppose qe ieo appay<sup>10</sup> le chateus cum moun propre etc. Mes qant il porte soun *Replegiare*<sup>11</sup>

<sup>1</sup> From *G.* Compared with *F.*, in which, however, the latter part of the report, shown on page 147 by the mark <sup>3</sup>, is missing. <sup>2-2</sup> Transgression ou le defendant dit qil fut baillif de vn hundred et vn homme se atacha de siwere vers le pleyntife et il fut sum(mone) et ne vynt pas: par quei fut agarde par le hundred qil fut destreint. et issi auowe il la prise de la lumentie en noun de destresce etc. Et le pleyntife dit qil la prist hors de la purceynte dil hundred etc *F.* <sup>3</sup> et *F.* <sup>4</sup> a Counte *F.* <sup>5</sup> *C. F.* <sup>6-6</sup> par quei il *F.* <sup>7</sup> del Hundred de C. et qe vous la preistes en le Hundred de B. aforce et en contre la pes. prest etc *F.* <sup>8</sup> est *F.* <sup>9</sup> voet estre plede *F.* <sup>10</sup> apropiia *F.* <sup>11</sup> *Add*: il ne suppose mie *F.*

of your fee, perhaps<sup>1</sup> you will be released of the penalty which would be imposed upon you if the contrary were found, that is (the penalty) of imprisonment and ransom etc.

### III.

(Writ) of trespass where the defendant avowed (the taking) in a certain place. That was traversed, and it was said that to that he ought not to be received, for to plead the place where the (taking) etc., would be to plead a plea which naturally lies in *replegiare*, and that is a writ of a different kind from this one etc.

One Simon brought his writ of trespass against one Martin and counted that on a certain day in a certain year and place he had wrongfully come with force and arms and there had taken and carried off a mare of his worth 10s. and led it away and (took) other chattels to the value of 40s. and<sup>2</sup> carried them off wrongfully and against the peace etc. and to his damage.

*Miggeley* defended and said that Martin is bailiff of the Earl of Surrey, of the hundred of Brothercross, and said that one Thomas came on a certain day and attached himself to sue against this same Simon in a plea of trespass. It was awarded that he be summoned, (and) afterwards (it was awarded that he be) attached. And because he made default it was awarded that he be distrained. And he said that he took the mare in the name of distress within the peace, and not against the peace, as bailiff etc. And as to the other chattels he tells you that he did not take them etc. Ready.

*Denom.* You confess the taking, but you avow for (a) cause etc. We are willing to aver that the place where you took them is outside the precinct etc.

*Passeley.* You shall not get to traversing the place, for your complaint states that we took the mare with force and against the peace, and to that we have said (it was) not against the peace but within the peace, and we have told the cause, and to that you can say no other thing but maintain your writ. For to plead as to whether the place where the taking was done is within our jurisdiction or no, would be to plead the plea which naturally lies in the (action of) *replevin*. And if you want (to choose) that way, we pray judgment of the writ.

*Denom.* My action is one of trespass against the peace, and as to your avowry I have said, in order to maintain my writ, that the place etc. is outside of your jurisdiction. And thus do I pursue my action.

*Herle.* When he brings his writ of trespass, he supposes that I appropriated<sup>2</sup> the chattels as my own etc. But when he brings his

<sup>1</sup> *par aventure.*

<sup>2</sup> Supplied from *F.*



ceo mesqe ieo les prys en noun de destresce et qe ieo voille soffrer la delyueraunce. dunt sil put pleder le plee en cesti bref de trespas qest pledable en le *replegiare*. <sup>1</sup>il ne vaudra<sup>1</sup> ren. cum a pleder le leu etc. ou hors de soun fee mes ore ieo ly r(espondis)<sup>2</sup> a saccioun. car ieo dy qe ieo les pris oue la pees et par cause *vt supra* dunt ne put il autre chose pleder. mesqe auer soun bref. Car a pleder outre etc. lequel le leu fut deinz la<sup>3</sup> iurediccoun ou hors. ceo seroit a pleder vn nouel plee dautre nature.

*Toud. ad idem.* Sil poit pleder en cesti bref le lu *vt supra*. Et pays venesit. et deyt qant a la prise qe le baillif la prit en noun de destresce. oue la pees seroit il dunqe denqerer le quel le leu etc. fut de deinz la seignurie ou de hors. noun seroit. Et dautrepart qant ieo fa la vouerie en cesti bref. y put sauver qe ieo ne les pris nent enapropriant a moy. Mes sil fut receu de pleder ensy a ma vouwerie en cesti bref et ieo fusse ateynt. ieo seroy reynt et enprisone. mes en le *Replegiari* si ieo fusse ateynt ieo ne seroy forqe amercie. par qei a mautort seroi ieo chace a pleder en cesti bref. qe veet tele peyne ceo qe naturelement veet estre plede en le *Replegiari* qe ne veet my si haut punissement.

*Denom.* Ieo preng lun et lautre et meynenge moun bref. kar ieo dy qe vous le preytes aforce et hors de vostre poer.

*Berr.* Vous conusset la prise par vertu del agarde dil Hundred de E. dunt de ceo qe vous passates vostre poer. de ceo prent il saccioun.

*Herle.* Si nous seoms chaces a respondre a cesti bref. ensy ensuereit qe chescune destresce qe le seignur fet hors de soun fee qe le pleint(ife) porra porter ceu bref *quare vi et armis*. et mettre soun seignur a Raunsoun.

*Berr.* Ieo ly tendra pur fol qe port bref de Trespas en supposant qe il fut hors de soun chatel la ou il put auer le *Replegiari* a fere delyueraunce de soun chatel. Mes pur ceo ne fust il point qe sil porte bref de Trespas. qil ne deyt estre receu. Mes sur le iugement paraventure vous vous poet eyder.

<sup>1-1</sup> le *replegiare* ne sert de *F*.      <sup>2</sup> respoin *F*.      <sup>3</sup> From here the report in *F* is wanting, as it was contained on a folio which is missing.

*replegiare*, that (is good) although I took them in the name of distress and although I am willing to suffer the delivery. Therefore, if in this writ of trespass he could plead the plea which can be pleaded in the *replegiare*, e.g. plead the place etc. or 'outside of his fee,' then 'the *replegiare* would serve no purpose.'<sup>1</sup> But now I answered him to his action, for I say that I took them within the peace and by cause (as above). Therefore he cannot plead anything else but (he must) aver his writ. For to plead over etc., whether the place was within or without the jurisdiction, would mean to plead a new plea of a different kind.

*Toudeby* (to the same purpose). If in this writ he could plead as to the place (as above), suppose the country came, and said, as to the taking, that the bailiff took it in the name of distress, within the peace, would it then have to be inquired whether the place etc. was within the seignory or without? It would not. And on the other hand, when I make avowry in this writ, I can put in the saving clause that I did not take them in the way of appropriating them to myself. But if he were received to plead thus to my avowry in this writ, and if I were convicted, (then) I would be ransomed and imprisoned. On the other hand, if I were convicted in the *replegiare*, I should only be amerced. Therefore it would be wrong to drive me to plead in this writ which entails such a penalty, a plea which naturally can be pleaded in the *replegiare*, because the latter does not entail such a heavy punishment.

*Denom.* I take one and the other and I maintain my writ. For I say that you took it by force and outside your jurisdiction.

BEREFORD C.J. You confess the taking by virtue of the award of the hundred of Brothercross. Therefore he takes his action as to this that you exceeded your power.

*Herle.* If we were driven to answer to this writ, it would thus follow that in the case of every distress which a lord levies outside of his fee the plaintiff will be able to bring this writ *quare vi et armis* and to put his lord to ransom.

BEREFORD C.J. I should hold for a fool a man who brings a writ of trespass, supposing that he is deprived of his chattel, where he can bring the *replegiare* to have the delivery of his chattel. But nevertheless it is not as though he would not be received if he actually did bring the writ of trespass. But perhaps you can profit yourselves in the matter of the judgment.<sup>2</sup>

<sup>1-1</sup> Supplied from *F*. The meaning is, that if such a plea could be pleaded in trespass, there would be no need of a *replegiare*.

<sup>2</sup> *I.e.* perhaps it is more advantageous for the plaintiff to bring a

writ of trespass, because the judgment against the defendant would be more severe. On the other hand, in an action of replevin the plaintiff would get his chattels back sooner than in an action of trespass.



*Toud.* Sire nous vous dioms qe nous la preymes deynz nostre Hundred oue la pees. et nent a force et armes prest etc.

*Denom.* Vous la preytes hors de vostre Hundred aforce etc. encountre etc.

*Et ideo ad patriam.*

#### IV.<sup>1</sup>

• Auowerie en trespas.

Vn Martyn porta vn bref de trespas vers Richard dune lumentie pris et amene a force et armes.

*Pas.* Richard est Bailif le Counte de Gar(enne) del Hundred de T et vous dioms qe vn L atacha plainte de trespas uers mesme cesti Martin en le hundred auantdit par qey M fust atache et fist defaute par qey agarde fust La graunt destresce. issint preimes la lumentie en noun de destresce en leu ou il se plaint deinz le purceint del hundred.

*Denh.* Le Leu est hors del Hundred.

*Pass.* Donques sumes a vn qe nous la preimes par resoun de nostre office en noun de destresce ou vostre rec(ouerie) vous est done par *replegiari*. Iugement de bref.

*Denh.* Vous me auez done le plee en taunt com vous dites qe vous venistes com bailif et ieo dy qe la prise se fit hors de vostre Bailie ou ieo ne peus autre plee auoir pur mon bref meyntenir.

*Pass.* Ceo bref demande issue par emprisonement et tiel penaunce ne me doit pas estre aiugge de prise fete en noun de destresce et par colour de office.

*Herle ad idem.* La ou homme fet prise en clamant proprete la gist bref de trespas mes la ou prise est fete en noun de destresce soit a dreit ou a tort la gist le *Replegiari*.

*Berforde.* Sil porte *Replegiari*. il aueroit la deliuerance et pledera en possessioun et ceo serroit son auauntage et sil veut fere son damage La ley le soefre bien.

*Toud.* La prise se fist denz le hundred prest etc.

*Alii econtra.*

#### V.<sup>2</sup>

*Quare vi et armis.*

Vn A porta soun *quare vi et armis* vers B.<sup>3</sup> et conta <sup>4</sup>certein ville et leu etc.<sup>4</sup>

*Toud.* Le Count de Herford<sup>5</sup> tent le Hundred de E<sup>6</sup> en Fe ferme

<sup>1</sup> From X.

<sup>2</sup> From C. Compared with T.

<sup>3</sup> W. T.

<sup>4-4</sup> Om. T.

<sup>5</sup> Heref. T.

<sup>6</sup> C. T.

*Toudeby.* Sir, we tell you that we took them within our hundred within the peace, and not by force and arms. Ready etc.

*Denom.* You took it outside your hundred, by force etc., against etc.

And therefore to the country.

#### IV.

##### Avowry in trespass.

One Simon brought a writ of trespass against Martin, for a mare taken and led away by force and arms.

*Passeley.* Martin is bailiff of the Earl of Warenne of the hundred of Brothercross, and we tell you that one Thomas attached a plaint of trespass against this same Simon, in the aforesaid hundred. Therefore Simon was attached and made default, therefore the grand distress was awarded. Thus we took the mare in the name of distress, in the place where he complains within the precinct of the hundred.

*Denom.* The place is outside the hundred.

*Passeley.* Then we agree that we took it by reason of our office in the name of distress. And (in such a case) your recovery is given you by the *replegiare*. Judgment of the writ.

*Denom.* You have given me the plea forasmuch as you have said that you came as bailiff, and I say that the taking was done outside of your bailiwick. And to maintain my writ (in a case like this) I can have no other plea.

*Passeley.* This writ requires (as its consequence) imprisonment, and no such penalty should be imposed upon me for a taking done in the name of distress and by colour of (my) office.

*Herle* (to the same purpose). A writ of trespass lies where one does a taking in claiming the property, but where the taking is done in the name of distress, be it right or wrong, there lies the *replegiare*.

BEREFORD C.J. If he brings a *replegiare*, he shall have the delivery and shall plead in possession, and that would be his advantage. And if he wants his own damage, the law allows it right enough.

*Toudeby.* The taking was done within the hundred. Ready etc.

Issue joined.

#### V.

##### *Quare vi et armis.*

One Simon brought his *quare vi et armis* against Martin and counted (of a taking in) a certain vill and place etc.

*Toudeby.* The Earl of Surrey holds the hundred of Brothercross



du Roy de quel Hundred<sup>1</sup> B. est Baill(if) en quel Hundred vn<sup>2</sup> Hugh<sup>3</sup> dona gag(e) en la mayn cesti B sur le dit A et sattacha de seure vers ly et<sup>2</sup> issint qe A fut somone de estre al Hundred<sup>3</sup> tenu a teu iour.<sup>4</sup> A queu iour il ne vint pas et la somounce testmoigne par qei fut agarde qil fut attache de estre al Hundred de cel iour<sup>5</sup> a iij. semeynz<sup>6</sup> et par vertue de cel agarde.<sup>7</sup> ala cum Baill(if) del Hundred de C. et prist cel<sup>8</sup> Iument en noun de destresce sanz rens fere encountre la pes et qant as autrez bestes : il ne lez prist pas prest etc.

*Denom.* Nous voloms auer qe vous preistez la Iument a<sup>2</sup> force et az armes<sup>9</sup> en le leu ou nous auoms counte et<sup>2</sup> hors del purceynte del Hundred etc.

*Pass.* Nous auoms assigne certeyne cause a qei il couent qe vous respondez.

*Denom.* En defesant vostre cause nous <sup>10</sup>vous dyoms qe<sup>10</sup> hors <sup>11</sup>de vostre<sup>11</sup> Hundred.

*Pass.* Ou<sup>12</sup> homme prent<sup>13</sup> a force et az armes. il aproprie a ly mesme lez bestez et la git enprisonement et ransoun mez la ou homme prent autr(i) bestes en noun de destresce : il il<sup>12</sup> afferme la proprete en la persone cely qe est destr(eint). <sup>14</sup>et si la destresce<sup>14</sup> seit tourcenouse <sup>15</sup>il ne git autre<sup>15</sup> si noun damages et amercement. mes nous vous dioms qe nous preymes cel Iument en noun de destresce. et auoms assigne<sup>16</sup> cause par qei vostre etc.<sup>17</sup> par autre bref etc. *extra feodum* etc.<sup>18</sup> et nent par ceo bref.<sup>19</sup>

*Berr.* En meyn cas homme porte le<sup>12</sup> *replegiari*<sup>12</sup> ou il purra<sup>20</sup> porter *quare vi et armis* et ceo est<sup>12</sup> pur ceo qil veot auer sez chateaux touz<sup>12</sup> delures<sup>21</sup> en pledant en<sup>21</sup> possessioun etc. et vous auez assigne cause<sup>22</sup> par ceo qe ceo estent for qe en le Hundred etc.<sup>22</sup>

*Pass.* Qe nous la preymes en la purceynte predite etc.

*Et alii econtra.*

## VI.<sup>23</sup>

### Trespas.

Vn homme se pleint(e) par vn bref de trespas qe le defendant en tiel lieu etc. prist son chiual a force et as armes.

<sup>1</sup> *Add*: cest m(esme) *T.*      <sup>2</sup> *Om.* *T.*      <sup>3</sup> *Add*: de etc. *T.*      <sup>4</sup> *Add*: a respondre a Hug(e) *T.*      <sup>5</sup> *Add*: en auant *T.*      <sup>6</sup> *Add*: a quel iour il ne vint point et lattachement testmoigne par qei agarde fut destresce al Hundred de ceo iour a III septimaines *T.*      <sup>7</sup> *Add*: B. *T.*      <sup>8</sup> vn *T.*      <sup>9</sup> *Add*: et *T.*      <sup>10-10</sup> auoms dit *T.*      <sup>11-11</sup> del *T.*      <sup>12</sup> *Om.* *T.*      <sup>13</sup> qe a prit *T.*      <sup>14-14</sup> *Om.* *T.*      <sup>15-15</sup> autre peine ne gist *T.*      <sup>16</sup> *Add*: certain *T.*      <sup>17</sup> recouerer est ordeine *T.*      <sup>18</sup> *Add*: ou replegiari *T.*      <sup>19</sup> *Add*: ou gist enprisonment *T.*      <sup>20</sup> purroit *T.*      <sup>21-21</sup> deliuerer et pleder en la *T.*      <sup>22-22</sup> estre baill(if) qe se esteint fors qe en vn hundred ou vous auez poer a destr(eindre) et non extra et il vous dit qe la prist(es) hors de uostre Hundred et pur ceo respondez *T.*      <sup>23</sup> From *Z.*

of the King in fee-ferm, and Martin is bailiff of that hundred, and in that hundred one Thomas gave gage into the hand of this Martin against the said Simon, and attached himself to sue against him, so that Simon was summoned to be at the hundred held on such a day. And on that day he did not come, and the summons was witnessed, therefore it was awarded that he be attached to be at the hundred in three weeks from that day, and by virtue of that award Martin went as bailiff of the hundred of Brothercross and took this mare in the name of distress, without doing anything against the peace. And as to the other beasts, he did not take them. Ready etc.

*Denom.* We are willing to aver that you took the mare with force and arms in the place where we have counted, and outside the precinct of the hundred etc.

*Passeley.* We have assigned a certain cause and to that you must answer.

*Denom.* In defeating your cause we have said 'outside of your hundred.'

*Passeley.* Where one takes with force and arms, one appropriates the beasts to oneself, and there follows imprisonment and ransom. But where one takes another's beasts in the name of distress, he affirms the property in the person of him who is distrained, and if the distress be tortious nothing else follows except damages and amercement. Now, we tell you that we took this mare in the name of distress, and we have assigned the cause, and therefore your <sup>1</sup>recovery is ordained<sup>1</sup> by another writ etc. *extra feodum* etc., and not by this writ.

BEREFORD C.J. In some cases one brings the *replegiare* where one could have brought the *quare vi et armis*, and that is because one wants to have one's chattels all delivered (and to plead) in possession etc. And you have assigned <sup>2</sup>as cause (something that would only be a good excuse) within the hundred etc.<sup>2</sup>

*Passeley.* That we took it within the said precinct etc.

Issue joined.

## VI.

### Trespass.

A man complains by a writ of trespass that the defendant in such a place etc. took his horse with force and arms.

<sup>1-1</sup> Supplied from *T*.

<sup>2-2</sup> This is a somewhat free translation of an obviously confused passage. The passage in *T* runs: (and you have assigned) as cause that you are bailiff, and that only held good within the

hundred where you have power to distrain, and not outside, and he tells you that you took it outside of your hundred, and therefore answer. See also the note at the end of VI (below, p. 150).



Lautre dist qe le pleintif est resaunt en tiel hundred dont le defendant est baillife et fust amercie etc et issi prist il etc et demanda iugement du bref.

Le pleintif dist qil ne poet par tiel cause auower qar la vewe etc est hors de la purceynte del hundred.

Et lautre demanda iugement desicom il nauoit pas dedit qil nauoit iurisdiccoun sur lui ou statut donne *vt de districcionibus factis extra feodum* et ne mye par ceste bref.

Et *Berr.* dit qe mieynt homme porte son *replegiare* la ou il put auer son *quare vi et armis* et ceo pur ceo qil put auer ses chateux deliueres et pleder en possession de ses chateux et la cause qe vous auetz assigne ne sistent forsque en le hundred par qei etc.

#### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 193 recto, Norfolk.  
Written by Burnedisshe.

Martinus filius Radulphi atte Wode de Thorpmarket Rogerus de Mumsle Thomas Milis et Iohannes et Adam filii eiusdem Thome in misericordia pro pluribus defaltis etc.

Idem Martinus et alii attachiati fuerunt ad respondendum Simoni filio Ade de Saxlingham iuxta Langham de placito quare vi et armis quoddam Iumentum ipsius Simonis precii quinque Marcarum apud Saxlingham iuxta Langham inuentum ceperunt et abduxerunt ac alia bona et catalla sua ad valenciam quadraginta solidorum ibidem inuenta ceperunt et asportauerunt et alia enormia etc. ad graue dampnum etc. et contra pacem etc Et vnde Idem Simon per Iohannem de Thirfford attornatum suum queritur quod predicti Martinus et alii die Iouis proxima post festum inuencionis sancte Crucis anno regni Regis nunc tercio vi et armis etc predictum Iumentum ipsius Simonis apud Saxlingham iuxta Langham inuentum ceperunt et abduxerunt et bona et catalla scilicet tapeta Linthiamina et alios pannos ipsius Simonis lineos et laneos ad valenciam etc ceperunt et asportauerunt contra pacem etc vnde dicit quod deterioratus est et dampnum habet ad valenciam decem librarum Et inde producit sectam etc.

Et Martinus et alii per Iacobum de Croxtone attornatum suum veniunt Et defendunt vim et iniuriam qu(ando) etc Et omnes preter predictos

The other said that the plaintiff resides in such a hundred, of which the defendant is bailiff, and the plaintiff was amerced etc., and thus he took etc. And he prayed judgment of the writ.

The plaintiff said that he cannot avow for such a cause, for the place<sup>1</sup> etc. is outside of the precinct of the hundred.

And the other prayed judgment since he had not denied that he had no jurisdiction, and in such cases the statute<sup>2</sup> gives (the writ) *ut de districtionibus factis extra feodum*, and (he should) not (proceed) by this writ.

And BEREฟอร์ด C.J. said that some men bring the *replegiare* where one could have one's *quare vi et armis*, and that is so because one can have one's chattels delivered and plead in possession of one's chattels.<sup>3</sup> And (he said): the cause which you have assigned only holds good within the hundred.<sup>3</sup> Therefore etc.

#### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 193 recto. Norfolk.  
Written by Burnedisshe.

Martin the son of Ralph Attewode of Thorpe Market, Roger of Mundesley, Thomas Milis and John and Adam, the sons of the said Thomas, in mercy for several defaults.

The same Martin and the others were attached to answer Simon the son of Adam of Saxlingham near Langham in a plea why with force and arms they took a mare of the said Simon, worth five marks, which they had found at Saxlingham near Langham, and carried it off, and also took and carried off other goods and chattels of his to the value of 40s., which they had found there, and other big etc. to the grave damage etc. and against the peace etc. And concerning this the said Simon complains by John of Thirfford, his attorney, that the said Martin and the others, on (May 7, 1310) the Thursday next following the feast of the Finding of the Holy Cross, in the third year of the reign of our Lord the present King, with force and arms etc. took and carried off the said mare of the said Simon, which they had found at Saxlingham near Langham, and took and carried off goods and chattels, to wit, coverlets,<sup>4</sup> sheets<sup>5</sup> and other linen and woollen goods belonging to the same Simon to the amount etc. against the peace etc., whereby he says that he has suffered loss and has damage to the amount of £10. And as to this he produces suit etc.

And Martin and the others come by James of Croxtone, their attorney, and deny force and wrong when etc. And all of them, except the said

<sup>1</sup> The text should obviously read (see above, p. 149).  
*leve* (place).

<sup>2</sup> Stat. Marl. c. 15.

<sup>3-3</sup> This passage is probably based on the same source on which is based the dubious passage in the end of V

<sup>4</sup> Usually an altar-cloth or pall (Ducange), but used also in the sense of a rich covering or hanging.

<sup>5</sup> Possibly 'linen clothes.'



**Note from the Record**—*continued*.

Martinum et Rogerum bene defendunt quod ipsi non fecerunt eidem Simoni aliquam transgressionem contra pacem sicut queritur etc Et similiter predicti Martinus et Rogerus quo ad predicta catalla vnde predictus Simon queritur etc bene defendunt quod ipsi non ceperunt nec asportauerunt catalla illa sicut Idem Simon queritur Et de hoc ponunt se super patriam.

Et Simon similiter etc.

Et quo ad capcionem predicti Iumentum iidem Martinus et Rogerus bene cognoscunt quod ipsi ceperunt Iumentum illud set non contra pacem etc Dicunt enim quod ipsi sunt balliui Iohannis de Warenn(a) comitis Surr(ey) de hundredo de Brothercros quod quidam (*sic*) Hundredum Idem Comes tenet de domino Rege ad feodi firmam Et dicunt quod quidam Thomas Milis attachiauit se ad sequendum uersus ipsum Simonem de placito transgressionis in Hundredo predicto per quod consideratum fuit in eodem Hundredo quod Idem Simon sum(moneatur) ad respondendum ipsi Thome ad hundredum predictum tentum die Iouis proxima post festum exaltacionis sancte Crucis. anno regni Regis nunc tercio. Ad quem diem Idem Simon sum(monitus) etc. non venit Ita quod consideratum fuit in eodem hundredo quod Idem Simon attach(iaretur) essendi ad proximum hundredum etc ad respondendum etc. Ad quem (*sic*) hundredum testificatum fuit quod idem Simon fuit attachiatus et non venit Ita quod consideratum fuit in eodem hundredo quod distr(ingeretur) essendi ad proximum hundredum etc. Et ea racione ceperunt ipsi predictum Iumentum nomine districcionis etc et non vi et armis nec contra pacem sicut predictus Simon queritur.

Et Simon dicit quod predicti Martinus et Rogerus transgressionem et iniuriam suam quo ad capcionem predicti Iumentum excusare non possunt racione predicta quia dicit quod predicta villa de Saxlingham non est in hundredo predicto immo extra idem hundredum de Brothercros et in hundredo de Holt et quod ipsi ceperunt predictum Iumentum extra predictum Hundredum de Brothercros vi et armis et contra pacem sicut queritur paratus (*sic*) est verificare etc.

Et Martinus et Rogerus dicunt quod ipsi ceperunt predictum Iumentum nomine districcionis sicut predictum est et non vi et armis nec contra pacem et in hundredo predicto de Brothercros et non extra Idem Hundredum sicut predictus Simon dicit Et de hoc ponunt se super patriam.

Et Simon similiter.

Ideo preceptum est vicecomiti quod venire faciat hic a die sancti Hillarii in xv dies xii etc per quos etc Et qui nec etc ad recognoscendum etc Quia tam etc.

39. ANON. v. LECLERC AND OTHERS.<sup>1</sup>

Trespas ou dit fut qil fut vyleyn.

Vn Robert et Anable porterent bref de Trespas. *quare vi et armis* deuers Ion leclerc. et autrez etc. et counterent qil vyndrent certain

<sup>1</sup> From *G*.

**Note from the Record**—*continued.*

Martin and Roger, entirely deny that they did any trespass against the peace to the said Simon as he complains etc. And similarly the said Martin and Roger, as to the said chattels about which the said Simon complains etc., do entirely deny that they (ever) took or carried off those chattels as the said Simon complains. And as to that they put themselves upon the country.

And Simon likewise etc.

And as to the taking of the said mare the said Martin and Roger do well confess that they took that mare, but not against the peace etc. For they say that they are the bailiffs of John of Warenne, Earl of Surrey, of the hundred of Brothercross, and the said Earl holds that hundred of our Lord the King in fee-ferm. And they say that one Thomas Milis attached himself to sue against the said Simon in the said hundred in a plea of trespass, wherefore it was considered in the said hundred that the said Simon be summoned to answer the said Thomas at the said hundred held on (May 7, 1310) the Thursday next following the feast of the Exaltation of the Holy Cross, in the third year of the reign of the present King. And on that day the said Simon, summoned etc., did not come. Thereupon it was considered in the said hundred that the said Simon be attached to be at the next hundred etc. to answer etc. And at that hundred it was testified that the said Simon was attached and did not come. Thereupon it was considered in the said hundred that he be distrained to be at the next hundred etc. And by that reason did they take the said mare in the name of distress etc., and not with force and arms against the peace, as the said Simon complains.

And Simon says that the said Martin and Roger cannot excuse by that reason their trespass and wrong as to the taking of the said mare. For he says that the said vill of Saxlingham is not within the said hundred, but outside the said hundred of Brothercross, and within the hundred of Holt, and (he says) that they took the said mare outside the said hundred of Brothercross, with force and arms and against the peace, as he complains, (and this) he is ready to aver etc.

And Martin and Roger say that they took the said mare in the name of distress as has been said before, and not with force and arms, nor against the peace, and within the said hundred of Brothercross and not outside the said hundred, as the said Simon says. And as to this they put themselves upon the country.

And Simon likewise.

Therefore the sheriff was commanded that he cause to come here on the quindene of St. Hilary twelve etc. by whom etc. and who are neither etc. to find etc. because both etc.

39. ANON. *v.* LECLERC AND OTHERS.

Trespass where it was said that he was a villain.

One Robert and Mabel brought a writ of trespass *quare vi et armis* against John Leclerc and others etc., and counted that they came on



ior aforce et as armes. et ly baterent. et ces bens enporterent a la vaillaunce etc. et ly pristerent et enprisonerent a tort etc.

*Will.* defendit etc. et dit qe mesme cesti Robert est vileyn labbesse de Pikesnote. et pur ceo qil estoit rebel et ne se voleynt iustis(er) pur fere vileinz seruiz. mesme cesti Ion cum baillif la priorasse et ala oue la pees. et ly prist par comaundement de la Prioressse. et ly amena en la sale. et illuqe ly deteynt or la qe se voleit iustis(er). et qant a la baterie de ren cop(able) prest etc. et qant a les benz enportez. nous preymes vne vache. et ix berbiz. si la qe se voleit iustis(er) et par comaundement la dame.

*Denom.* Il ad conu le trespas et alegge vilenage en sa persone. et nad my affirme seignurie en sa persone a dire qil est soun vileyn. eynz autri vileyn. et desicom vileyn est franc vers chescun estre soun seignur. iugement de la conissaunce.

*Berr.* Il ad dit qil vynt cum baillif la Priorasse. et qil est vilein la Priorasse et si ad il excuse soun tort.

*Scrop.* En dreit de ii. qe vnt conu qe vyndrent en Eide. et nemy cum baillif. ne par commaundement la dame. iugement de lor conissaunce. et la demuroms en iugement. en dreit de ceo qil dyunt qe Robert est vileyn la Priorasse. fraunc home et de fraunc est(at). et fut ior du bref purchace. prest etc.

*Toud.* Cest auerment est a trier en le (sanc). a quel nous ne pooms estre partie saunz nostre dame et prioms eyde.

*Denom.* Cest vn bref de trespas et de vostre tort demesne par quei eyde ne deuert auer.

*Et pendet.*

#### 40. TYK v. FRANCEYS AND ANOTHER.<sup>1</sup>

Trespas de bens enportez.

Henry Tyk porta bref de trespas vers Ion Franceys et vn A de ses bens enportez et ses seruantz batuz.

*Scrop.* Qant ala baterie de ren copable. qant as bens vous dioms qe Felice iadis feme H. del assent H. fist test(ament) de la morte des bens H. et fist ses executours in ceus I. et A. qi receurent a(dmin)is-

<sup>1</sup> From X.

a certain day with force and arms and beat him and carried off his goods of the value etc. and took and wrongfully imprisoned him etc.

*Willoughby* defended etc. and said that this same Robert is a villein of the Abbess of Pikesnote,<sup>1</sup> and because he was rebellious and would not submit to justice to do villein services, therefore this same John, as bailiff of the Prioress, went within the peace and took him by the order of the Prioress and led him to the hall and there he detains him now (so) that he would submit to justice. And as to the battery (he pleads) not guilty. Ready etc. And as to goods carried off we took one cow and nine sheep so that he would submit to justice, and by order of the lady.

*Denom.* He has confessed the trespass and he alleges villainage in his (the plaintiff's) person; and he has not affirmed that the lordship resides in his (the defendant's) person, so as to say that the plaintiff is his villain, but he says that the plaintiff is another's villain, and since a villain is free against everybody except his lord, judgment of the conusance.

*BEREFORD C.J.* He has said that he came as bailiff of the Prioress and that he is a villain of the Prioress and thus he has excused his wrong.

*Scrope.* As to the two who have confessed that they came to help and not as bailiff(s) or by order of the lady, judgment of the conusance, and we abide judgment. As to that, which they say, that Robert is a villain of the Prioress, (he is) a free man and of free estate and he was so on the day of the purchase of the writ. Ready etc.

*Toudeby.* This is an averment to try the blood, and we cannot be party to that without our lady. And we pray aid.

*Denom.* This is a writ of trespass and of your own wrong. Therefore you ought not to have aid.

And the cause is pending.

#### 40. TYK *v.* FRANCEYS AND ANOTHER.

Trespass for goods carried off.

Henry Tyk brought a writ of trespass against John Franceys and A., for his goods carried off and his servants beaten.

*Scrope.* As to the battery, not guilty. As to the goods we tell you that Felise sometime wife of Henry, with the assent of Henry, made a will as to the goods of Henry, and made her executors as to these goods John and A., who received the administration before the Ordinary.

<sup>1</sup> Doubtful.



tr(acion) deuant ordiner et eus et H. de partirent les bens issint les pristrent il sanz ren fere contre la pees.

*Herle.* Il vnt conu lenport(acion) et se escusent par testament et deuis de cel qe ne put proprete auer ne deuis fere.

*Scrop.* Seoms a vn.

*Herle.* Ieo nai mest(ie)r qar vous fundez vostre response sur chose gest contre commune dreit et qant ala m(in)istr(acion) liuere par ordiner coment put celi liuerer am(in)istr(acion) a altre des bens qeus il mesme ne pout m(in)istr(er) si ele deuiast intestat. estre ceo. il ne put am(in)istr(er) forsqe de bens le testat(ours).

*Denom.* Seoms a vn si ele fist testament par vostre assent et si les bens furent departiz par vostre assent.

*Herle.* Qei auez del assent.

*Denom.* Prest etc.

*Herle.* Ceo est trop poy de chose contre commune dreit.

*Brab.* Respones si le testament et le depart(ir) des bens se firent par vostre assent.

*Herle.* Il emporterent nos bens solom ceo qe nostre bref suppose sanz ceo qe F. nostre femme de nostre assent null testament fist. et sanz ceo qe par nostre assent null seuerance de bens se fist prest.

*Alii econtra.*

#### 41. PEYNTOUN *v.* MUSKET.<sup>1</sup>

Dette demaunde del baroun apres la mort sa femme par resoun del contract mesme la femme duraunt la couerture. ou le Counte fut abatu par iuggement.

Ceo vous moustre Roger Peyntoun qe cy est qe Willem Musket qe iloeqes est atort ly detient etc. et pur ceo atort qe tel iour etc. Alice qe fut la femme mesme cesti Willem ressut de ly ii. qarters de forment pur vii. s(ous) a paier etc.

*Ass.* Par sa pleynte il vye deregn(er) la dette vers W. et par sa demonstraunce il fet vne Alice partie a contract iugement de la forme.

*Tiltoun.* Le fet la femme en tel cas est le fet baroun qar il sount

<sup>1</sup> From *P.*

And they and Henry divided the goods. Thus they took them without doing anything against the peace.

*Herle.* They have confessed the carrying off and they excuse themselves by the testament and devise of one who could neither have property nor make a devise.

*Scrope.* Let us be at one.

*Herle.* I have no business (to do so) for you found your answer upon something that is against common law; and as to the administration delivered by the Ordinary, how can he deliver to someone else the administration of goods which he himself could not administer if she had died intestate? Apart from that, he can only administer goods of testators.

*Denom.* Let us be at one whether she made a will with your assent and whether the goods were divided with your assent.

*Herle.* What do you have (in proof) of the assent?

*Denom.* Ready (to aver) etc.

*Herle.* That is too little<sup>1</sup> for something that is against common law.

BRABAZON C.J.K.B. Answer whether the will and the division of goods were made with your assent.

*Herle.* They carried off our goods according to that which our writ supposes, and Felise, our wife, did not make any testament with our assent, and no division of goods was made with our assent. Ready etc.

Issue joined.

#### 41. PEYNTOUN v. MUSKET.

Debt demanded from the husband after the wife's death by reason of a contract entered into by the said wife during the coverture. And the count was abated by judgment.

Showeth to you Roger Peyntoun who is here that William Musket<sup>2</sup> who is there wrongfully withholds from him etc., and for this reason wrongfully, that on such a day etc. Alice wife that was of this same William received from him two quarters of wheat for 7s. to pay etc.

*Asshele.* By his plaint he wants to claim<sup>3</sup> the debt against William, and by his demonstration he makes one Alice a party to the contract. Judgment of the form.

*Tiltoun.*<sup>4</sup> The deed of the wife is in such a case the deed of the

<sup>1</sup> *I.e.* not sufficient evidence.

<sup>3</sup> *deregner.*

<sup>2</sup> William Musket was a brother of John Musket of Ditton (*Cal. Pat.* 1313-17, p. 312).

<sup>4</sup> This name does not appear in other reports of the term.



come vne persone et par con(sequen)t le baroun deit r(espoundre) del contract la femme. *Item.* exec(utour) r(espondra) de dette. vnquore cest de autri contract.

*Ass.* Exec(utours) representent la persone le testatour et le baroun represente sa persone demene. *Item* nostre excepcion est a la forme et nous vous dorroms bone forme. E pur ceo atort qe par la ou meme cesti Willem par Alice sa femme ressut etc. et ceo seroit bone forme tut fust la femme morte.

*Tiltoun.* Conisez le contract et pus dites qe le contract ne vous deit nure.

*Ass.* Ieo ne dey pas qil couendreit prendre issue en cest cas ou par auerement, et la Court nad pas poer a fere venir enqueste, ou par alayement, et ley ne soefre pas qe homme face sa lei dautri contract ou p(ri)er qe la sute soit examine et dount couendreit qe Alice fuse present qant la sute sereit charge et examine iugement coment nous deuoms departir.

*Tiltoun.* Cest a la Iurisdiccion de la Court et vous auez plede plus haut et qant a fere venir enqueste etc. a eux est de allegger qant il vendrout en Court qil ne deyuent iurer saunz bref le Roi et nounpas a vous qe vous ne poez tailer autri volunte sil voilent iurer ou noun. et sil ne voilent iurer cest vostre auantage demene. *Item.* la ou vous dites qe home ne sera pas a sa ley si noun de contract entre meme les persones. vous dites mal. qe la ou exec(utours) portent bref de dette le defendaunt poet estre a sa lei. vnquore nest pas le contract entre meme les persones. *Item,* la ou vous dites qil couendreit qe Alice fuse present qant la sute sereit examine. vous dites mal. qar il gist nul chalenge qe chescun sera examine seueralment et priuement.

*Ass.* Tut veusissoms prendre issue par vn des trois voies. la Court ne le receuerait pas.

*Tiltoun.* Depus qe vous ne prendrez pas issue par nule negatiue

husband, for they are as one person, and consequently the husband ought to answer for the wife's contract. Likewise, the executor will answer for a debt, and yet that (debt) is (derived) from another's contract.

*Asshele.* Executors represent the person of the testator and the husband represents (only) his own person. Similarly, our exception is to the form and we shall suggest to you a good form: 'and for this reason wrongfully that whereas this same William received by Alice his wife etc.' And that would be a good form albeit that the wife is dead.

*Tiltoun.* Acknowledge the contract and then say that the contract ought not to harm you.

*Asshele.* I ought not to. For in such a case it would be necessary to take issue in this case (in one of the following three ways): either by averment—and the Court has not the power to cause the inquisition to come; or by waging the law—and the law does not allow one to wage one's law as to another's contract; or by (praying) that the suit be examined—and then it would be necessary that Alice should be present when the suit would be charged and examined. Judgment how we are to depart.<sup>1</sup>

*Tiltoun.* This is (a plea) as to the jurisdiction of the Court, and you have pleaded (a) higher (plea). And<sup>2</sup> as to causing the inquisition etc. to come it is for them to allege, when they will have come into Court, that they ought not to swear without the King's writ, and it is not for you (to allege that) because you cannot bind other people's will whether they want to take the oath or not. And if they should not want to take the oath that is your own advantage. Likewise,<sup>3</sup> whereas you say that one shall not be at one's law except as to contract between the same persons, you are wrong; for if executors bring a writ of debt the defendant can be at his law, and yet the contract is not between the same persons. Likewise,<sup>4</sup> whereas you say that it would be necessary for Alice to be present when the suit would be examined, you are wrong, for there lies no challenge: for every one (of the suit) will be examined separately and in private.

*Asshele.* Even if we wanted to take issue by one of the three ways, the Court would not receive it.

*Tiltoun.* Since you will not take issue by any negative to our

<sup>1</sup> *I.e.* whether we shall not 'go without day.'

<sup>2</sup> Here counsel begins to answer the three points in the adversary's statement.

<sup>3</sup> Here begins the answer to the second point.

<sup>4</sup> Here begins the answer to the third point.



a nostre pleynte il couent qe vous grantez lafirmatif qest a con(est)re la dette.

*Ass.* Il couent pas qar si la Court veye qe nous pussoms prendre issue par vn de treis voies nous r(espondroms) assez.

*Tiltoun.* Cest al accion. dount si vous demorez en iuggement vous serez noun defendu. si la Court seit tele qe ele vous pusse tel issue doner.

*Ass.* weyua etc. et dit qe accioun ne pout il auer pur ceo qe nul contract qe sa femme fist taunt come ele fut couerte ne pout charger soun baroun iugement.

*Tiltoun.* Le contract vostre femme vous torna en profit et de ceo deuez r(espoundre) <sup>1</sup>qar si enfant deinz age recoit argent a son profit il r(espondra) de ceo a son plein age.

*Ass.* Ieo vous deny. et tut fuse ensi nest pas semblable qe tut est vne persone qant il est deinz age et de plein age. mes iscy le baroun et sa femme s(ount) diuers persones.<sup>1</sup>

*Ass.* Vous nauendrez pas ore de enlargir vostre Counte. *estre ceo* dep(u)s qe vous le alargez vous abatez la pleynte et le Counte. com en assise de nouele disseisine si ieo faz ma plainte en certeyn et p(u)s en clarefiaunt ma pleynte. me plenke de plus qe la primere pleynte ne voloit. ieo abate ma plainte demene. *ita hic.*

*Tiltoun.* Si le tenaunt en Assise de nouele disseisine mette auant relees et quitecl(amaunce). il couent qe le pleintif a ceo r(esponde) vnquore plede il donqe plus haut qe soun bref ne veult. nepurqant soun bref est(ir)a qar il est chace a pleder plus haut. *ita hic* il nous chace de affermer nostre accioun.

*Ass.* Il prent saccioun soulement du contract la femme qe ne put soun baroun obliger iugement. *Item.* si la femme fust en vie couendret nomer la femme et le baroun par resoun de la Couerture et dep(u)s qe ele est morte la couerture est defete *ergo* le baroun ne sera pas nome et par conu(er)t il r(espondra) pas. *Item.* si home ne poet recoueryr vers cely qest partie al contract a moult plusfort il recouera pas vers celi qe nest pas partie al contract. mes vers la femme nauerez pas accioun apres la mort le baroun et par conu(er)t ne vers le baroun apres la mort la femme qant il ne fut pas partie al contract.

<sup>1-1</sup> is an addition on the margin.

complaint, it is necessary that you shall grant the affirmative, that is, acknowledge the debt.

*Asshele.* It is not necessary, for if the Court should see that we can take issue by one of the three ways, we will answer enough.

*Tiltoun.* This is to the action. Therefore, if you abide judgment, you will be non-defended if the Court be so (advised) that it can give you such an issue.<sup>1</sup>

*Asshele* waived (his plea) etc. and said that he (the plaintiff) could not have an action because no contract that the wife made while she was covert could place a charge upon her husband. Judgment.

*Tiltoun.* Your wife's contract turned to your profit and for that you ought to answer. For if an infant within age receive money for his profit, he will answer for it at his full age.

*Asshele.* I deny you(r statement). And even if that be so, this is not a similar case. For he is all the same person when he is within age and of full age, but here the husband and his wife are different persons.

*Asshele.* You shall not get now to enlarging your count. Moreover, if you enlarge it you abate the plaint and the count, just as in an assize of novel disseisin if I make my plaint as to certain matters and if then, in making my plaint clearer, I complain of more than was contained in the first plaint, I abate my own plaint. The same is true here.

*Tiltoun.* If in an assize of novel disseisin the tenant put forward a release and quitclaim, the plaintiff must answer to that, yet he then pleads higher than his writ went. Nevertheless his writ will stand because he is compelled to plead higher. The same is true here. He compels us (to plead higher in order) to affirm our action.

*Asshele.* He takes his action solely on the contract of the wife, who could not bind her husband. Judgment. Likewise, if the wife were alive it would be necessary to name both the husband and the wife, by reason of the coverture, and since she is dead the coverture is defeated; *ergo*, the husband will not be named and (consequently) he will not answer. Likewise, if one cannot recover against him who is a party to the contract *a multo fortiori* shall one not recover against him who is not a party to the contract: now, you shall not have an action against the wife after the death of the husband, and conversely you shall also not have (an action) against the husband after the death of the wife, if he was not a party to the contract.

<sup>1</sup> *I.e.* you must plead now, for if the Court should come to the conclusion that you could have pleaded in one of these ways, and if you shall abide judgment, it will be taken that you did not have a plea against our demand.



*Tiltoun.* Si ieo ey apreste a vn Priour remuable. x. li. et p(u)s il est remue ieo porterai moun bref vers soun successour et si ieo pusse auer qe les deners tornerent a soun profit il r(espondra) *non obstante* qil ne purra pas estre oblige par le fet soun predec(essour) *ita hic*.

*Ass.* *Non est simile.* qe taunt com le priour demorra en soun estat vous auiez vostre recouerir vers ly. mes si le baroun la femme fust mort vous recoueriez rien iammes.

Indicium.

P(u)s fust ag(arde) qil prist ren par sa pleynte. Mes sil vst counte qe meme cesti Willem par Alice sa femme ressent taunt a soun profit. il vst recouery la dette.

#### 42. ANON.<sup>1</sup>

##### I.<sup>2</sup>

Dette.

Bref de Dette fut porte vers iii par diuers precipes. qar chescun fut oblige en lent(ier). lour aturne vint en Court et conust la dette par qei la partie pria iugement vers chescun de eux seueralment.

*Scrop.* La dette ne amoute qe a xl. mars et si vous recouerisez vers chescun seueralment .xl. mars. vous recoueriez.  $\frac{xx}{vi}$  mars pur .xl. mars.

Par qei iugement se fit qil recouery xl. mars. E si execucion se face vers vn de eux les autres sont assouth(es). E si les ii. neient rien. execucion se f(er)a vers le terce *si habeat* etc.

##### II.<sup>3</sup>

Dette.

Treis furent obliges par vn fait a vn homme en Ely *unu(s)quisque in* (sic) *solid(is)* et porta son bref vers treis et demanda lenter vers chescun par seuerals precipes vn vynt en Court et conust le fait par qei la partie lelegit (sic) et celui qauoit conu le fait pria qe lobliga(sion) lui fust liure issint qil poeit auer son rec(ouerir) deuers les autres <sup>4</sup>et non habuit.<sup>4</sup>

<sup>1</sup> Reported by P, Z.    <sup>2</sup> From P.    <sup>3</sup> From Z.    <sup>4-4</sup> Interlined and not quite clearly written.

*Tiltoun.* If I lend £10 to a removable Prior and if afterwards he is removed, I shall bring my writ against his successor, and if I can aver that the money has turned to his profit he shall answer notwithstanding (the fact) that he cannot be bound by the deed of his predecessor.<sup>1</sup> The same is true here.

*Asshele.* That is not a similar case, for while the Prior retained his estate you had your recovery against him, but if the husband of the wife were dead, you would never recover anything.

Afterwards it was awarded that he took nothing by his plaint. Judgment. But if he had counted that this same William had received, by Alice his wife, so much to his profit, he would have recovered the debt.<sup>2</sup>

## 42. ANON.

### I.

#### Debt.

A writ of debt was brought against three, with separate (clauses of) *precipe*, because each one was obliged for the whole. Their attorney came into Court and acknowledged the debt. Therefore the party prayed judgment against each one of them severally.

*Scrope.* The debt only amounts to 40 marks and if you were to recover against each one severally 40 marks, you would recover 120 marks for 40 marks.

Therefore judgment was made that he recover 40 marks, and if execution be made against one of them the others are released.<sup>3</sup> And if the two have nothing, execution will be made against the third if he have (anything) etc.

### II.

#### Debt.

Three were obliged by a deed to a man in Ely, each one for (so many) shillings. He brought his writ against the three and by several (clauses of) *precipe* demanded the whole against each. One of them came into Court and acknowledged the deed, therefore the party chose him. And he who had acknowledged the deed prayed that the bond be delivered to him so that he could have his recovery against the others. <sup>4</sup>And he did not have it.<sup>4</sup>

<sup>1</sup> An interesting contribution to the history of the idea of corporations-sole.

<sup>2</sup> The whole case is interesting as illustrating the conception of *actio de in rem verso* in mediæval English law.

<sup>3</sup> *assouthes*—i.e. made quit, left in peace.

<sup>4-4</sup> This passage is interlined and not quite clearly written.



*Sed credo* qant le visconte ad retorne le *Elegit* issint qil ad execucion de tot qe adonqe loblīgacion lui serroit liuere et sa sute en droit des autres cessera.

*Et quere veritatem etc.*

43. VERNOUN v. BRUN.<sup>1</sup>I.<sup>2</sup>

Nota en le *q(ui) facit sectam ad molend(inum)* le tenant nauoit mye la vewe pur ceo qil meyme auoit s(u)stret la etc.

Nota en le *q(ui) facit sectam ad molend(inum)* ou le d(emaun)daunt conta se<sup>3</sup> seisine demeyne et le tenant d(emaun)da la vewe et dist qil auoit plusours tenanz. en me(n) la ville. et il ne sauoit de queuz tene-menz il d(emaun)da sa sute et issint la vewe necessarie.

*Pass.* De vostre tort demeyne ne deuez la vewe auer etc.

*Herle.* Cest vn bref de dreit et nous ne sum(u)s pas ouste par statut. iugement si etc.

*Berr.* Vous ne deuez la vewe auer.

Et fut ouste par ag(ard).

Partes istius placiti Ric(ardus) le Brun et Ric(ardus) le vernoun.

S(et) in tempore Rad(ulphi) de Hengham tenens in hoc casu habuit visum non obstante subtraccione sua propria.

<sup>1</sup> Reported by *G*, *P*.

<sup>2</sup> From *P*.

<sup>3</sup> *Corr.* : de sa.

But I believe that when the sheriff has returned the *elegit*, so that (the plaintiff) has execution of the whole, then the obligation will be delivered to him and (the plaintiff's) suit with regard to the others will cease.<sup>1</sup>

And *quaere* whether that is true.

#### 43. VERNOUN *v.* BRUN.

##### I.

Note that in a *qui facit sectam ad molendinum* the tenant did not have the view because he himself had withheld etc.

In a *qui facit sectam ad molendinum* the demandant counted of his own seisin and the tenant demanded the view and said that there were several tenants in the same vill and he did not know for what tenements the plaintiff demanded his suit, and thus the view was necessary.

*Passeley.* (The action being based) on your own wrong you ought not to have the view etc.

*Herle.* This is a writ of right and we are not ousted by statute. Judgment whether etc.

BEREFORD C.J. You ought not to have the view.

And he was ousted by award.

The parties of this plea were Richard le Brun<sup>2</sup> and Richard le Vernoun.<sup>3</sup>

But in the time of RALPH OF HENGHAM, in a case like this, a tenant had the view notwithstanding that he himself had withheld.

<sup>1</sup> An interesting contribution to the theory of 'solidary obligations.'

<sup>2</sup> In 1307 Richard le Brun was appointed Keeper of the Peace in Lancashire, Cumberland and Westmorland, 'to meet the damages incurred by the men of those parts by the incursions of Robert Bruce' (*Cal. Close* 1307-13, p. 42; *Cal. Pat.* 1307-13, pp. 3, 4). In 1309 he was appointed assessor of the 25th in Cumberland (*Cal. Pat.* 1307-13, p. 183) and a commissioner to inquire into prises (*ibid.* p. 250). In 1312 he was a commissioner of oyer and terminer (*ibid.* p. 541).

He died before 1317 (*Cal. Close* 1313-18, p. 494).

<sup>3</sup> Richard of Vernon was 'regent' in canon law at Oxford in 1319, when the University was requested to allow him—notwithstanding their statute, by which he was bound to continue his lectures—to attend to the custody of the spiritualties of Hereford, during the absence of the bishop, Adam Orleton, who was going to Rome on the King's service (*Cal. Close* 1318-23, p. 121; *Cal. Pat.* 1318-21, pp. 265, 432). In 1320 he was a canon of Hereford (*Cal. Pat.* 1318-21, p. 432).



II.<sup>1</sup>

*De secta Mol(endini) ou il fut oste de la veuwe.*

Vn Adam porta soun bref etc. et counta etc.

*Hert.* defendist et demaunda la veuwe.

*Denom.* La veuwe ne deuēt auer. qe nous auoms counte de nostre seisine demesne seisi par vostre mayn tanke etc. iugement si de vostre tort demesne deuēt la veue auer.

*Scrop.* En amesur(ement) de pasture vous conuceret qe ieo ay sorcharge la commune de pasture. e la auera ieo la veue. auxi par descea.

*Hert. ad idem.* Nous tenoms diuerse tenemenz en H. par qei nous ne pooms sauē des queus vous demaundet la seute. sinoun par la veue par qei etc. Et dautrepart cest vn bref mixt en le dreit par qei etc.

*Herui.* En vn cessaut de vostre cesser demesne vous naueret my la veuwe. qest vn bref de dreit. dunt de plus fort vous naueret my la veue en ceo bref de possession.

*Et n(on) habuit.*

## Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 196 verso. Cumberland.

Written by Luding'.<sup>2</sup>

Ricardus Brun in misericordia pro pluribus defaultis.

Idem Ricardus summonitus fuit ad respondendum Ricardo de Vernoun de placito quod faciat sectam ad molendinum ipsius Ricardi de Vernoun de Routhelue quam ad illud facere debet et solet etc Et vnde idem Ricardus de Vernoun per Ricardum de Morland attornatum suum dicit quod cum predictus Ricardus Brun debeat et solet (*sic*) facere sectam ad molendinum ipsius Ricardi (d)e vernoun supradictum de omnimodis bladis crescentibus in quatercentum acris terre in Routhelue Molendini ad tercium decimum vas De qua quidem secta idem Ricardus de vernoun fuit seisitus per manus predicti Ricardi Brun vt de feodo et Iure tempore pacis tempore E Regis patris domini Regis nunc capiēdo inde expletas ad valenciam etc Idem Ricardus Brun sectam illam per quatuordecim annos ante impetracionem breuis etc iam subtraxit et facere contradixit et adhuc contradicit vnde dicit quod deterioratus est et dampnum habet ad valenciam centum librarum Et inde producit sectam etc.

Et Ricardus Brun per attornatum suum venit Et defendit vim et iniuriam qu(ando) etc.

Et datus est eis dies hic a die sancti Hillarii in xv dies prece parcium sine esson(ia) etc.

<sup>1</sup> From *G.*    <sup>2</sup> Before this record the same membrane contains an almost identical transcript of the same record (up to the words *Et inde producit sectam etc.*) which is cancelled and has the marginal note: *Alibi inferius.*

## II.

Suit at a mill, where he was ousted of the view.

One Adam brought his writ etc. and counted etc.

*Herle* (?) defended and demanded the view.

*Denom.* You ought not to have the view, for we have counted of our own seisin: 'seised by your hand until etc.' Judgment whether you ought to have the view (since the action is based) on your own wrong.

*Scrope.* In (an action for) admeasurement of pasture you would make conusance that I had overcharged the common of pasture, and (yet) in that case I should have the view. The same is true here.

*Herle* (?) (to the same purpose). We hold different tenements in Routheliue, therefore we cannot know for which you demand the suit, save by the view. Therefore etc. And on the other hand this is a writ mixed (with questions) of right, wherefore etc.

STANTON J. In a *cessavit* (based) on your own ceasing, you shall not have the view, and that is a writ of right. Therefore *a fortiori* you shall not have the view in this possessory writ.

And he did not have (the view).

## Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 196 verso. Cumberland.  
Written by Luding'.

Richard Brun in mercy for several defaults.

The same Richard was summoned to answer Richard of Vernoun in a plea that he do suit at the mill of the said Richard of Vernoun, at Routheliue, which he ought, and has been used, to make there etc. And concerning this the said Richard of Vernoun says by Richard of Morland, his attorney, that the said Richard Brun ought and is used to do suit at the said mill of the said Richard of Vernoun with all kinds of grain growing in four hundred acres of land in Routheliue Mill at (the rate of) the thirteenth pot, and of that suit the said Richard of Vernoun was seised by the hands of the said Richard Brun, as of fee and right, in time of peace in the time of King Edward father of our Lord the present King, taking thereof the esplees to the amount etc. But the said Richard Brun has for fourteen years before the purchase of the writ etc. withheld and refused to do, and still refuses to do that suit, whereby he (the plaintiff) says that he has suffered loss and has damage to the amount of £100. And as to this he produces suit etc.

And Richard Brun comes by his attorney, and denies force and wrong when etc.

And a day was given them on the quindene of St. Hilary upon request of the parties without essoiners etc.



44. THE BISHOP OF CARLISLE *v.* MULCASTRE.<sup>1</sup>I.<sup>2</sup>

*Quod permittat* <sup>3</sup>de commune de pasture. ou le tenant en ioynngnant la Mise conust le dreyt le demandant a communer en certeyne sesone dil an et ne mye par tut le an.<sup>3</sup>

Ceo vous mustre Iohan Euesqe de Cardoil <sup>4</sup>persone del. Esglise de Assepatrike. par son. attorne<sup>4</sup> etc. qe Robert de Mulcastre<sup>5</sup> qe ileoke est. a tort ne luy seoffre<sup>6</sup> communer en C. acres de<sup>7</sup> more et de Brusseie od tote maner des bestes parmy totes les sesons del an et pur ceo a tort qe cest son dreit et le dreit de sa Esglise de Aspatrike<sup>8</sup> et dount vn son predecessour W.<sup>9</sup> par noun fu. seisi com de fee et de dreit com<sup>10</sup> del dreit de sa Esglise de Aspatrike<sup>8</sup> en tenps de pees en tenps <sup>11</sup>etc. Reg(is)<sup>11</sup> espleez prist. com en pesaunt cez auers nomement chiuiaus. beofs. vaches <sup>12</sup>et berbiz et altre manere des bestes et en altre manere de issue de commune mount(er) etc. co<sup>12</sup> de fee et de dreit de sa Esglise auaundite et qe tel. seit son dreit et le dreit de sa Esglise <sup>13</sup>de Aspatrike<sup>13</sup> il en ad syute et derene bone.

*Denum* defendit tort et force et le dreit <sup>14</sup>Iohan Euesqe etc. persone etc. et le dreit de sa Esglise de Aspatrik et defendit etc. et rehersa le count et<sup>14</sup> conust bien son dreit et le dreit de sa Esglise <sup>13</sup>de Aspatrike<sup>13</sup> et la seisine son predecessour a communer en .C. acres. de<sup>7</sup> more et de Brusseie od tote manere des bestes. chescun an de la. feste de touz seyns. tanqe a la chaundelour<sup>15</sup> <sup>16</sup>proscheyn suaunt.<sup>16</sup> et de la chaundelour tanqe a la feste de touz seyns. defendit tort et force et le dreit leuesqe de C. persone etc. et le dreit <sup>17</sup>de sa Esglise de Aspatrike<sup>17</sup> tote a trenche et la seisine son predecessour .W. par noun de qy seisine. il ad counte tot outre com de fee et de dreit et le dreit de sa <sup>17</sup>Esglise de Aspatrike<sup>17</sup> nomement a communer en C. acres de<sup>7</sup> More et de brusseie od tote manere des bestes de la Chaundelour tanqe a la fest. de touz seyns.

<sup>1</sup> Reported by *E, F, P, X.* <sup>2</sup> From *E.* Compared with *F*, which, however, contains only the first part of the report, ending at the point shown below by the mark\*. Headnote from *F.* <sup>3-3</sup> *Om. E.* <sup>4-4</sup> *Om. F.* <sup>5</sup> *H. F.* <sup>6</sup> *Add:* auer commune de pasture en N. qe auer deit nomement a *F.* <sup>7</sup> *Add:* boys et de *F.* <sup>8</sup> *E. F.* <sup>9</sup> *Raufe F.* <sup>10</sup> et *F.* <sup>11-11</sup> le Rey E etc. *F.* <sup>12-12</sup> etc. montant a dix marks etc. cum *F.* <sup>13-13</sup> etc. *F.* <sup>14-14</sup> tut atrenche etc. et rechapitela etc. et pus defendit tort et force *F.* <sup>15</sup> In *F* the other description—Purificacion de nostre Dame—is used here and in the following part of the report, <sup>16-16</sup> et la seisine sun predecessour Raufe par noun de qi seisine il ad conte tut outre cum de fee et de dreit de sa eglise etc. *F.* <sup>17-17</sup> etc. *F.*

44. THE BISHOP OF CARLISLE *v.* MULCASTRE.<sup>1</sup>

## I.

*Quod permittat* for common of pasture. The tenant in joining the mise admitted the right of the demandant to common in certain seasons of the year and not throughout the year.

Showeth<sup>2</sup> to you John, Bishop of Carlisle,<sup>3</sup> parson of the church of Aspatria, by his attorney etc., that Robert of Mulcastre,<sup>4</sup> who is there, wrongfully does not suffer him to common in one hundred acres of moor and of heath, with all kinds of beasts, throughout all the seasons of the year: and for this reason wrongfully, that it is his right and the right of his church of Aspatria, and (that) his predecessor, W. by name, was seised of it as of fee and of right as<sup>5</sup> of the right of his church of Aspatria, in time of peace, in the time etc. (of King Edward) the King, he took esplees as by pasturing his beasts, to wit, horses, oxen, cows and sheep and other kinds of beasts, and otherwise (he was seised) of the issue of the common amounting etc. as of fee and of the right of his said church. And that such is his right and the right of his church of Aspatria, he has suit and good claim.

*Denom* denied wrong and force and the right of John Bishop etc. parson etc. and the right of his church of Aspatria and defended etc. and rehearsed the count. And he fully granted his right and the right of his church of Aspatria and the seisin of his predecessor (of the right) to common in one hundred acres of moor and of heath with all kinds of beasts, every year from the feast of All Saints until Candlemas next following. And (as to the time) from Candlemas until the feast of All Saints he entirely denied wrong and force and the right of the Bishop of Carlisle parson etc. and the right of his church of Aspatria and the seisin of his predecessor, Ralph<sup>6</sup> by name, of whose seisin he has counted 'all over'<sup>7</sup> as of fee and of right, and (he denied) the right of his church of Aspatria, namely, to common in one hundred acres of moor and heath with all kinds of beasts from Candlemas until the feast of All

<sup>1</sup> This is a continuation of a case the beginning of which seems to have been in Michaelmas of the fourth year. See *Y.B.* 3/4 Edw. II, S.S; *Y.B.B.* iv, 201. It proceeded then until the granting of the view.

<sup>2</sup> It is curious that both in this case and in the report mentioned in the preceding note the count is set out *verbatim*.

<sup>3</sup> John of Halton, Bishop of Carlisle 1292-1324 (*Stubbs, Reg. Sac. Angl.*).

<sup>4</sup> Robert of Mulcastre was coroner

for Cumberland till 1318, when he was captured by the Scots (*Close* 1318-23 p. 43). On his return to England in 1319 he was certified as incapacitated by blindness from resuming his duties and another coroner was accordingly elected (*ibid.* p. 72).

<sup>5</sup> *Or*: and (according to *F*).

<sup>6</sup> Ralph Ireton, Bishop of Carlisle 1280-92 (*Stubbs, Reg. Sac. Angl.*).

<sup>7-7</sup> This is probably the correct translation of *tot outre*.



chescun an. et se mette en dieu. et en la grant assise. nostre seignur le Rei le quel. il. ad maur<sup>1</sup> dreit a tenir .C. acres de<sup>2</sup> more et de Brusseie<sup>3</sup> chescun an de la Chaundelur tange a la feste de touz seyns en seueralte com son dreit si com. il. les tent. ou il a communer en .C. arc de More et de Brusseie od tote manere des bestes chescun an de la Chaundelur tange a la fest de touz seyns. com son dreit et le dreit de sa Esglise de Aspatrike si come il ad demande.<sup>3</sup>\*

*Tou.* Nous prioms iugement de cel. qe nous est conue et en dreit del. remenaunt estoise la mise.

## II.<sup>4</sup>

*Quod permittat.*

Ion Euesqe de Cardoil porta le *Quod permittat* de communer en C. acres de Boys de beuer(ie) et de more oue tute manere des bestes par tut lan et lia seisine en H persone son predecessour come del dreit de sa esglise et tendi sute et deseü. . . .

*Denh.* defendi et rechapita le counte peus defend(i) et bien conust le dreit leuesqe et de sa esglise a communer en les C. acres checun an de la feste de touz seintz taunt qe a la chaundel(ure) oue tute manere de bestes peus def(endi) tort et force et le dreit etc. et de sa esglise tut atrench nomement a communer en C. acres de boys de la Pur(ificacioun) taunt qe a la feste de touz seyntz. Dan en an oue tute manere de bestes etc. et se met etc. le qel il ad meur dreit de tenir en seueraute de la Pur(ificacioun) etc. saunz ceo qe I. doit communer etc. si com il tient ou I. Euesqe Dauoir la Commune de la Pur(ificacioun) etc. sicom il demaunde.

## III.<sup>5</sup>

. . . *quod permittat habere communam* pro Episcopo qui se nominauit Episcopum et personam ecclesie etc. ou son droit fut defendu en vne sesoun del an et en vn autre si fut le droit conu.

Robertus de Mulcastre summonitus fuit ad respondendum Iohanni Episcopo Karlioli persone ecclesie de Aspatryke<sup>6</sup> de placito quod per-

<sup>1</sup> meeur *F.*    <sup>2</sup> *Add:* boys et de *F.*    <sup>3-3</sup> en seueralte de la feste de la Purificacion de nostre dame ieke a la feste de touz seinz. saunz ceo qe Iohan euesqe etc. deit communer de La feste de La purificacion etc. taunke ala feste des touz seynz de an en an oue touz maneres de bestes cum sun dreit et le dreit de sa eglise etc. cum sun dreit sicom il tient ou Iohan le Euesqe etc. de auer cele commune en les C. acres etc. de la feste de la Purificacion etc. taunke a la feste des touz seinz de an en an oue tote manere de bestes cum sun dreit et le dreit de sa eglise de E. si cum il demaunde etc.    \* Here ends the report in *F.* It must be remarked that there are many minor differences between the two MSS. which have not been reproduced.

<sup>4</sup> From *X.*

<sup>5</sup> From *P.* Compared with the record.

<sup>6</sup> Aspatryke *Rec.*

Saints every year. And he (the defendant) puts himself upon God and upon the grand assize of our Lord the King, whether he (the defendant) has a better right to hold one hundred acres of moor and of heath every year from Candlemas until the feast of All Saints in severalty as his right, as he does hold them, or (whether the plaintiff has a better right) to common in one hundred acres of moor and of heath with all kinds of beasts every year from Candlemas until the feast of All Saints as his right and the right of his church of Aspatria as he has demanded.

*Toudeby.* We pray judgment as to that of which conusance is made us,<sup>1</sup> and as to the rest let the mise stand.

## II.

### *Quod permittat.*

John Bishop of Carlisle brought the *quod permittat* for commoning in one hundred acres of wood heath and moor with all kinds of beasts throughout the year. And he alleged seisin in the person of Ralph, his predecessor, as of the right of his church, and tendered suit and claim.

*Denom* defended and recapitulated the count. Afterwards he defended, and fully acknowledged the right of the Bishop and of his church to common in the hundred acres every year from the feast of All Saints until Candlemas with all kinds of beasts, (but) then he denied wrong and force and the right etc. and of his church altogether, namely, to common in one hundred acres of wood from Purification until the feast of All Saints, from year to year, with all kinds of beasts etc. And he puts himself etc. as to whether he has a better right to hold in severalty from Purification etc., (so that John ought not to common etc.) as he (the defendant) does (actually) hold it, or whether John the Bishop (has a better right) to have the common from the Purification etc. as he demands.

## III.

. . . *quod permittat habere communam* for a bishop who described himself as bishop and parson of the church etc., where his right was denied as to one part of the year and (his) right was admitted as to another part of the year.

Robert of Mulcastre was summoned to answer John, the Bishop of Carlisle, parson of the church of Aspatria, in a plea that he permit

<sup>1</sup> That is, as to the right to common Saints' Day is November 1, and Candlemas February 2.



mittat ipsum habere communam pasture in vomamby<sup>1</sup> quam habere deberet<sup>2</sup> etc. Et vnde idem Episcopus per Thomam de Vesci<sup>3</sup> attornatum suum dicit quod cum ipse habere debet<sup>4</sup> communam pasture in C.<sup>5</sup> acris bosci Bruscei<sup>6</sup> et more<sup>7</sup> cum pertinenciis in predicta villa comunandi cum omnibus<sup>8</sup> auis<sup>9</sup> suis per totum annum de qua communa quidam Radulfus quondam Episcopus Karlioli persona ecclesie predictae predecessor etc. fuit seisitus ut de feodo et iure ecclesie sue predictae de Aspartryke<sup>10</sup> tempore pacis etc. tempore Regis E. patris Regis nunc capiendo inde expletas etc. ad ualenciam etc. predictus Robertus communam illam<sup>11</sup> deforciat etc. Et quod tale sit ius ecclesie sue<sup>12</sup> de A offic'<sup>12</sup> etc.

Et Robertus per Robertum de Samfford<sup>13</sup> attornatum suum venit et bene concedit quod predictus Episcopus persona ecclesie predictae<sup>14</sup> de A.<sup>14</sup> habere debet communam suam in predictis C.<sup>5</sup> acris bosci Bruscei<sup>6</sup> et more cum omnimodis aueriis suis singulis annis a festo omnium sanctorum vsque ad festum Purificacionis beate Marie tantum et inde cong(ruam)<sup>15</sup> seisinam predicti Radulfi quondam Episcopi etc. persone ecclesie predictae predecessoris etc. de cuius seisina etc. ut de feodo et iure predictae Ecclesie sue de A<sup>16</sup> sed quo ad residuum temporis etc. scilicet a predicto festo Purificacionis beate Marie vsque ad festum omnium sanctorum defendit ius ecclesie sue predictae de Aspatrike<sup>16</sup> et seisinam predicti Radulfi quondam Episcopi persone ecclesie predictae predecessoris etc. de cuius seisina etc. ut de feodo et iure et totum etc. et ponit se in magnam assisam domini Regis et petit recognicionem fieri vtrum ipse maius ius habeat tenendi predictas .C.<sup>5</sup> acras bosci brusei<sup>6</sup> et morei<sup>17</sup> singulis annis in separalitate ab eodem festo Purificacionis beate Marie vsque festum omnium sanctorum proxim(um)<sup>18</sup> absque hoc quod predictus Episcopus persona ecclesie etc. aliquam communam habere debeat ibidem infra tempus illud sicut illas .C.<sup>5</sup> acras tenet. an predictus Episcopus persona ecclesie predictae habendi communam suam in eisdem per idem tempus vt de iure ecclesie sue predictae de Aspartrike<sup>19</sup> omnimodis aueriis suis sicut eam exigit etc. Et idem Robertus de Mulcastre dat<sup>20</sup> domino Regi dimidiam marcam pro habenda mentione de tempore etc.

Et recipitur per pl(egium) Roberti de N.<sup>21</sup> de comitatu predicto.

<sup>1</sup> vemanby *Rec.*      <sup>2</sup> debet *Rec.*      <sup>3</sup> vescey *Rec.*      <sup>4</sup> debeat *Rec.*  
<sup>5</sup> centum *Rec.*    <sup>6</sup> Bruscei *Rec.*    <sup>7</sup> mere *Rec.*    <sup>8</sup> omnimodis *Rec.*    <sup>9</sup> aueriis  
*Rec.*    <sup>10</sup> Aspatrike *Rec.*    <sup>11</sup> Add: ei *Rec.*    <sup>12-12</sup> predictae de Aspatrike offert  
*Rec.*    <sup>13</sup> Sandeford *Rec.*    <sup>14-14</sup> de Aspatrike *Rec.*    <sup>15</sup> cognoscit *Rec.*    <sup>16</sup> As-  
patrike *Rec.*    <sup>17</sup> more *Rec.*    <sup>18</sup> proximo sequens *Rec.*    <sup>19</sup> Aspatrike  
cum *Rec.*    <sup>20</sup> offert *Rec.*    <sup>21</sup> Sandford *Rec.*

him to have a common of pasture in Ucmanby<sup>1</sup> which he ought to have etc. And concerning this the said Bishop says by Thomas of Vesey, his attorney, that whereas he ought to have the common of pasture in one hundred acres of wood, heath (*brusceti*) and moor, with the appurtenances, in the said vill, to common with all<sup>1</sup> kinds<sup>1</sup> of his beasts<sup>1</sup> throughout the year, and (whereas) of that common one Ralph, sometime Bishop of Carlisle, parson of the said church, predecessor etc., was seised as of fee and (of the) right of his said church of Aspatria in time of peace etc. in the time of King Edward father of the present King, taking thereof the esplees etc. to the amount etc.,—the said Robert deforces him<sup>1</sup> of that common etc. And that such is the right of his church of Aspatria he offers<sup>1</sup> etc.

And Robert comes by Robert of Sandeford, his attorney, and he fully grants that the said Bishop, parson of the said church of Aspatria, ought to have his common in the said one hundred acres of wood, heath, and moor, with all kinds of his beasts every year, from the feast of All Saints until the feast of Purification of Blessed Mary only, and as to that he admits<sup>1</sup> the seisin of the said Ralph sometime Bishop etc., parson of the said church, predecessor etc., on whose seisin etc., as of fee and (of the) right of his said church of Aspatria. But as to the rest of the time etc., to wit, from the said feast of Purification of Blessed Mary until the feast of All Saints he denies the right of his said church of Aspatria and the seisin of the said Ralph sometime Bishop, parson of the said church, predecessor etc., on whose seisin etc., as of fee and of right and the whole etc. And he puts himself upon the grand assize of our Lord the King and he asks that it be found whether he has a better (*maius*) right to hold the said one hundred acres of wood, heath, and moor, every year in severalty from the said feast of Purification of Blessed Mary until the feast of All Saints next following,<sup>1</sup> so that the said Bishop, parson of the church etc., ought not to have there any common within that time, as he, Robert, (actually) does hold those one hundred acres, or whether the said Bishop, parson of the said church, (has a better right) to have his common in them throughout that time as of the right of his said church of Aspatria with<sup>1</sup> all kinds of his beasts as he demands it etc. And the said Robert of Mulcastre gives to our Lord the King half a mark for having a mention of the time<sup>2</sup> etc.

And this is received by the pledge of Robert of Sandford from the said county.

<sup>1</sup> Supplied from the Record.

grants the common to be justified.

<sup>2</sup> *I.e.* of the time during which he



## Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 307 recto. Cumberland.  
Written by Luding'.

Dies datus est eis hic a die Pasche in tres septimanas etc. Et tunc ven(iant) quatuor milites etc.

45. PYKERINGE *v.* THE PRIOR OF WATTON.<sup>1</sup>I.<sup>2</sup>

## Annuite.

Mestre Robert<sup>3</sup> Pigrynke<sup>4</sup> porta son bref dannuite vers ly Priour de W. et demanda C. marcs qe arr(ere) ly furent dun annuite de D(?) marcs par an ou le Priour conust lannuite et les arr(erages)<sup>5</sup> par qei feut agarde qe mestre Robert receut lannuite et les arrerages<sup>5</sup> auant le purchace du bref et puis (et) ses damages qe furent taxez par la Court a .x. marcz. et le Priour en la mercye etc.

<sup>1</sup> Reported by *F*, *M*, *X*.    <sup>2</sup> From *M*. Compared with *F*.    <sup>3</sup> Roberd *F*.  
<sup>4</sup> Pykeringe *F*.    <sup>5-5</sup> *Om.* *F*.

## Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 307 recto. Cumberland.  
Written by Luding'.

A day was given them here in three weeks from Easter. And let then come four knights etc

## 45. PYKERINGE v. THE PRIOR OF WATTON.

## I.

## Annuity.

Master Robert of Pykeringe<sup>1</sup> brought his writ of annuity against the Prior of Watton<sup>2</sup> and demanded 100 marks which were in arrear of an annuity of 100<sup>3</sup> marks a year. The Prior made conusance of the annuity and of the arrears, wherefore it was awarded that Master Robert should receive the annuity and the arrears (incurred) before the purchase of the writ and afterwards (and) his damages which were assessed by the Court at 10 marks. And the Prior in mercy etc.<sup>4</sup>

<sup>1</sup> In 1307 Master Robert of Pykeringe, canon of York, going beyond sea on the King's service, received a grant of protection, which was renewed for a year in 1308 (*Cal. Pat.* 1307-13, pp. 12, 143). In 1309 he was a commissioner of oyer and terminer, and in 1310 was summoned to Parliament at London (*Cal. Close* 1307-13, pp. 241, 338). The King was 'astonished at his not obeying' this summons (*ibid.* p. 351), but as he was vicar-general of Archbishop Greenfield, then in Rome, it is probable that he could not be spared from his duties in the north (*ibid.* p. 370). He was summoned to Parliament again in 1311 (*ibid.* p. 438), and in 1312 was one of those sent by the King to the Ordainers to treat with them for the correction of such ordinances as might be prejudicial to the King or other persons (*ibid.* p. 451; *Cal. Pat.* 1307-13, p. 437). In 1315 he was Dean of York, and was appointed to inquire into the perquisites of the steward of Galtres (*Cal. Close* 1313-18, p. 248). In the same year the King pardoned him for a

disseisin on Richard de Wrote, and the justices were ordered not to trouble him concerning it (*ibid.* p. 254). In 1317 Pykeringe's manor-house at Hornby was broken by Jocelyn Deyville and William of Wederhale (*Cal. Pat.* 1313-17, p. 688). The Pickering chantry at Bootham was founded in 1314 by Master Robert (*ibid.* pp. 177, 213), who afterwards added to its endowment (*ibid.* 1317-21, pp. 22, 259; 1324-7, p. 213).

<sup>2</sup> The Priory of Watton was a double house of nuns and canons of the Gilbertine order (Dugdale, *Mon.* vi, 954). In 1314 Edward II granted the House a year's immunity from the purveyors for his Scots wars, because they had suffered so much from unauthorised purveyance (*V.C.H. Yorks.* iii, 254). The Priory was still in debt in 1326, when Archbishop Melton lent them money (*ibid.*). John of Hoton became Prior in 1300 (Dugdale, *loc. cit.*).

<sup>3</sup> Supplied from the Record.

<sup>4</sup> The translation is based on a comparison of the Report with the Record.



II.<sup>1</sup>

Annuite.

Mestre Robert de Pikeringe recoueri vne annete oue les arr(erages) deuant le brief (par ?) auowere. porte par conveaunce de partie et ses damages.

## Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 150 recto. Yorkshire.  
Written by Luding'.

Prior de Wactone in misericordia pro pluribus defaultis.

Idem Prior summonitus fuit ad respondendum Magistro Roberto de Pykeringe, Canonico ecclesie beati Petri Ebor(acensis) de placito quod reddat ei ducentas marcas que ei aretro sunt de annuo redditu centum marcarum quem ei debet etc. Et vnde idem Magister Robertus per Ricardum de Pykeringe attornatum suum dicit quod cum predictus Prior et eiusdem loci conuentus in festo exaltacionis sancte crucis anno regni Regis patris domini Regis nunc tricesimo tercio in pleno capitulo suo apud Wactone de assensu domini Philippi Magistri Ordinis etc. concessisset predicto Magistro Roberto predictum annum redditum centum marcarum, percipiendum annuatim de domo suo (*sic*) de Wactone scilicet quinquaginta marcas ad festum Pentecostes et quinquaginta marcas ad festum sancti Martini, tota vita ipsius Magistri Roberti etc. de quo quidem redditu idem Magister Robertus fuit seisitus per manus predicti Prioris etc. vsque iam duobus annis elapsis ante impetracionis (*sic*) breuis etc. videlicet decimum diem Iunii anno regni domini Regis nunc quarto, quod predictus Prior predictum annum redditum eidem Magistro Roberto detinuit et reddere contradixit etc. vnde dicit quod deterioratus est et dampnum habet ad valenciam quadraginta librarum Et inde producit sectam etc. Et profert quoddam scriptum sub nomine predictorum Prioris et conuentus quod predictum annum redditum testatur in forma predicta etc.

Et Prior per Iohannem de Wartre attornatum suum venit. Et bene concedit predictum scriptum esse factum predicti Prioris et Conuentus Et non potest dedicere quin tenetur predicto Magistro Roberto in predicto annuo redditu : qui ei aretro est sicut queritur etc.

Ideo consideratum est quod predictus Robertus recuperet uersus predictum Priorem predictum annum redditum centum marcarum et Trescentas marcas pro arreragiis duorum annorum ante impetracionem breuis etc <sup>2</sup>et vnus anni post<sup>2</sup> et dampna sua que taxantur per Iusticiarios ad decem libras et Prior in misericordia etc.

<sup>1</sup> From X.<sup>2-2</sup> These words help to reconstitute the text of the Report.

## II.

## Annuity.

Master Robert of Pykeringe recovered an annuity with the arrears (incurred) before the writ by an avowry brought<sup>1</sup> by the connivance of the party. And (he recovered) his damages.

## Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 150 recto. Yorkshire.  
Written by Luding'.

The Prior of Watton in mercy for several defaults.

The same Prior was summoned to answer Master Robert of Pykeringe, canon of the church of St. Peter of York, in a plea that he give him back two hundred marks which are in arrear to him of an annuity of 100 marks which he owes him etc. And concerning this matter the said Master Robert says by Richard of Pykeringe, his attorney, that whereas the said Prior and the convent of the same place did on (May 3, 1305) the feast of the Exaltation of the Holy Cross, in the thirty-third year of the reign of the King father of our Lord the present King, in their full chapter at Watton with the assent of Lord Philip the Master of the Order etc. grant to the said Master Robert the said annuity of one hundred marks, to be received every year from their house of Watton, to wit, fifty marks at the feast of Pentecost and fifty marks at Martinmas, throughout the life of the said Master Robert etc., and (whereas) the said Master Robert was seised of that annuity by the hands of the said Prior etc. until two years before the purchase of the writ etc., to wit, (until) the tenth day of June in the fourth year of the reign of our Lord the present King (1311),—the said Prior has withheld and refused to render to the said Master Robert the said annuity etc., whereby he says that he has suffered loss and has damage to the amount of £40. And as to this he produces suit etc. And he proffers a certain writing in the name of the said Prior and Convent, which witnesses the said annuity in the said form etc.

And the Prior comes by John of Wartre, his attorney. And he quite admits that the said writing is the deed of the said Prior and Convent. And he cannot deny that he is bound to the said Master Robert in the said annuity which is in arrear as he (Master Robert) complains etc.

Therefore it was considered that the said Robert should recover against the said Prior the said annuity of one hundred marks, and three hundred marks for the arrears of two years before the purchase of the writ etc. and for one year afterwards, and his damages which are assessed by the Justices at £10. And the Prior in mercy etc.

<sup>1</sup> The recognisance mentioned in Report I is probably meant.



## Note from the Record—continued.

Et sciendum quod predictum scriptum retraditur Attornato predicti Magistri Roberti etc.

Dampna X. *Li.* vnde Clericis C. s.

46. DE LA FORDE v. THE EARL AND COUNTESS OF WARWICK.<sup>1</sup>

Annuite.

Bref de annuyte fut porte vers <sup>2</sup>Guy de Dowere et Is.<sup>2</sup> sa femme etc. <sup>3</sup>et le fait Robert Comyn piere la femme fut mys auant<sup>3</sup> en countre eux et la date dil fait voleit a Londr(es) etc.

*Herle.* En temps de la confeccioun<sup>4</sup> <sup>5</sup>Robert Comyn fist<sup>5</sup> deinz age et vous dioms qil nasquit en<sup>6</sup> C. en le Conte de B.<sup>7</sup> et prioms pais de cele Counte.

*Ston.* Nous prioms pais del West<sup>8</sup> de Londr(es) *ubi littera facta est*<sup>9</sup> ou pais delun et del autre.

*Berr.* Il nad mye dedit le fait einz lad<sup>10</sup> conu <sup>11</sup>mais il<sup>11</sup> dit qe <sup>12</sup>ce fait<sup>12</sup> ne ly deit greuer qil fut denage et de soun age nul pais pout auer conisance forsque le pais ou il nasquit.

<sup>13</sup>*Ston.* La ou il dit qil nasquit en C. en le Counte de B. etc. nous vous dioms qil nasquit<sup>13</sup> a A. en le Countie <sup>14</sup>de Cant'<sup>14</sup> et prioms pays de lun Counte et delautre.

*Berr.* Vous naueretz pas forsque du Counte <sup>15</sup>de B.<sup>15</sup> ou il dit qil nasquit etc.

<sup>1</sup> From *T.* Compared with *C*, *P.* Headnote from *P.* <sup>2-2</sup> le counte de Warr. et I. *C.* le counte de Warwyk et I. *P.* <sup>3-3</sup> *Om. C.* et myst auant le fet Robert Thony le frere la femme *P.* <sup>4</sup> *Add:* de ceu fet *C. Sim. P.* <sup>5-5</sup> R. T. fut *C.* R. Tony fust *P.* <sup>6</sup> *Add:* la ville de *P.* <sup>7</sup> Berwyke *C.* Berewyk *P.* <sup>8</sup> visne *C.* visnee *P.* <sup>9</sup> fuit *C, P.* <sup>10</sup> ad *C, P.* <sup>11-11</sup> et *C, P.* <sup>12-12</sup> *Om. C, P.* <sup>13-13</sup> *Om. C* (apparently an oversight of the copyist who was misled by the word *nasquit*). <sup>14-14</sup> de Hautbourn *C.* snatedren *P.* <sup>15-15</sup> *Om. C.* de Berewyk *P.*

**Note from the Record**—*continued*.

And be it known that the said writing is handed back to the attorney of the said Master Robert etc.

Damages £10, whereof to the clerks 100s.

46. DE LA FORDE *v.* THE EARL AND COUNTESS  
OF WARWICK.

Annuity.

A writ of annuity was brought against Guy Beauchamp<sup>1</sup> and Alice his wife,<sup>2</sup> and the deed of Robert Tony, father of the wife, was put forward against them, and the date of the deed ran: 'at London' etc.

*Herle.* At the time when the deed was made Robert Tony was within age. And we tell you that he was born in Cyntelegh<sup>3</sup> in the county of Worcester, and we pray the country from that county.

*Stonore.* We pray the country from the West of London where the deed was made, or the country from the one and from the other.

BEREFORD C.J. He has not denied the deed, but he has made conusance of it, but he says that this deed ought not to hurt him because (Robert) was within age. And as to his age no country can have cognisance save only the country where he was born.

*Stonore.* Whereas he says that he was born in Cyntelegh<sup>3</sup> in the County of Worcester etc., we tell you that he was born in A. in the County of (Cambridge<sup>4</sup>) and we pray the country from one county and from the other.

BEREFORD C.J. You shall only have (the country) from the county of (Worcester) where he says that he was born etc.

<sup>1</sup> Earl of Warwick, served in the Scots Wars 1298-1304, distinguished himself at Falkirk and received a grant of land in Scotland. He was one of the earls who rejected the Pope's authority on the Scottish question and was with Edward I at his death. He was one of the Lords Ordainers in 1310, and took an active part against Gaveston, whom he carried off to Warwick and afterwards handed over to Lancaster. He received the King's pardon for his share in Gaveston's death, but refused to serve in the Scots expedition of 1314. In the following year he died at Warwick, not without suspicion of

poison (J. H. Round, in *Dict. Nat. Biog.*).

<sup>2</sup> Widow of Thomas Leyburne and sister and heir of Robert Tony. She married Warwick before February 28, 1310, and survived him, dying in 1324. She married as her third husband William Lord Zouch of Mortimer (G. E. C., *Complete Peerage*).

<sup>3</sup> In Abberley in the Hundred of Doddingtree (*Feud. Aids*, v, 304). Robert Tony died seised of this vill in 1309 (*Cal. inq. p.m.* v, No. 198).

<sup>4</sup> The Record does not mention that the plaintiff contested the defendants' statement as to the place where Robert was born.



## Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 301 recto. London.  
Written by Burnedisshe.

Guydo de Bello campo Comes Warrewyk et Alicia vxor eius summoniti fuerunt ad respondendum Ade de la Forde de placito quod reddant ei quinquaginta et quinque libr(as) vndecim robas et quinque sellas que ei a retro sunt de annuo redditu decem libr(atarum) duarum robarum et vnus selle quem ei debent etc. Et vnde Idem Adam per Walterum de Comptone attornatum suum dicit quod cum Robertus filius Radulphi de Tony frater predictae Alicie cuius heres ipsa est sextodecimo die Iulii anno Regni domini E Regis patris domini Regis nunc vicesimo quinto. apud London(iam) per scriptum suum obligasset se et heredes suos teneri predicto Ade in predicto annuo redditu decem libr(atarum) et duarum robarum et vnus selle per annum Reddendo eidem Ade singulis annis ad totam vitam ipsius Ade videlicet Centum solid(os) ad festum sancti Michaelis Et centum solid(os) ad Pascha (sic) etc et tales robas et tales sellas quales milites ipsius Roberti de eo caperent quem quidem annum redditum decem libr(atarum) et duarum robarum predictus Robertus in vita sua Et similiter predicti Guydo et Alicia post mortem ipsius Roberti per quinque annos et dimid(ium) ante diem impetracionis breuis et redditum predictae selle per quinque annos ante eundem diem impetracionis breuis etc eidem Ade subtraxerunt et reddere contradicunt vnde dicit quod deterioratus est et dampnum habet ad valenciam centum librarum. Et inde producit sectam etc Et profert quoddam scriptum sub nomine predicti Roberti de Tony fratris etc quod predictum annum redditum testatur etc.

Et Guydo et Alicia per Iohannem le Boteler de Warrewyk attornatum suum veniunt Et defendunt vim et iniuriam qu(ando) etc Et bene cognoscunt predictum scriptum esse factum predicti Roberti fratris etc. set dicunt quod ipsi pretextu predicti scripti in predicto annuo redditu obligari non debent. Quia dicunt quod predictus Robertus frater etc tempore confeccionis predicti scripti fuit infra etatem. Et hoc parati sunt verificare etc.

Et Adam dicit quod predictus Robertus frater etc tempore confeccionis predicti scripti fuit plene etatis et non infra etatem. Et hoc paratus est verificare per Iur(atam) de London(ia) vbi predictum scriptum confectum fuit etc.

Et Guydo et Alicia dicunt quod verificacio predicta super etate predicti Roberti verificanda admitti non debet per Iur(atam) de London(ia) Dicunt reuera quod predictus Robertus natus fuit apud Sinteleye (?) in Comitatu Wygorn(iensi) Et quod Idem Robertus tempore confeccionis predicti scripti scilicet predicto sextodecimo die Iulii anno predicti Regis patris etc vicesimo quinto fuit infra etatem ponunt se super patriam Comitatus Wygorn(iensis).

## Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 301 recto. London.  
Written by Burnedisshe.

Guy Beauchamp, Earl of Warwick, and Alice his wife, were summoned to answer Adam de la Forde<sup>1</sup> in a plea that they render him fifty-five pounds, eleven robes, and five saddles, which are in arrear to him of an annuity of £10, two robes, and one saddle which they owe him etc. And concerning this matter the said Adam says by Walter of Comptone, his attorney, that whereas Robert the son of Ralph of Tony, brother of the said Alice, whose heiress she is, had on the sixteenth day of July in the twenty-fifth year of the reign of Lord Edward the King, father of the present King, at London, by his deed, obliged himself and his heirs to be bound to the said Adam in the said annuity of £10, and two robes, and one saddle a year, rendering (them) to the said Adam every year throughout the life of the said Adam, to wit, 100s. at Michaelmas and 100s. at Easter etc., and such robes and such saddles as the knights of the said Robert took from him,—the said Robert did in his lifetime, and similarly the said Guy and Alice after the death of the said Robert withhold and refuse to render to the said Adam the said annuity of £10 and of two robes for five years and a half before the day of the purchase of the writ and the annuity of the said saddle for five years before the said day of the purchase of the writ, whereby he says that he has suffered loss and has damage to the amount of £100. And as to this he produces suit etc. And he proffers a writing in the name of the said Robert of Tony, brother etc., which witnesses the said annuity etc.

And Guy and Alice come by John the Butler of Warwick, their attorney, and deny force and wrong when etc. And they quite admit that the said writing is the deed of the said Robert brother etc. But they say that under the pretext of the said writing they ought not to be bound in the said annuity. For they say that the said Robert, brother etc., at the time of the making of the said writing was within age. And this they are ready to aver etc.

And Adam says that the said Robert, brother etc., at the time of the making of the said writing was of full age and not within age. And this he is ready to aver by a jury from London where the said writing was made etc.

And Guy and Alice say that the said averment as to the verification of the age of the said Robert should not be admitted by a jury from London. They say indeed that the said Robert was born at Cyntelegh in the County of Worcester, and (concerning the statement) that the said Robert at the time of the making of the said deed, to wit, on the said sixteenth day of July in the twenty-fifth year of the said King father etc., was below age, they put themselves upon the country of the County of Worcester.

<sup>1</sup> Adam de la Forde was beyond the sea on the King's service in 1308 (*Cal. Pat.* 1307-13, p. 46), and was a commissioner 'de walliis' for Somerset in 1311 (*ibid.* p. 308). He was still living in 1323 (*ibid.* 1321-4, p. 296), but died before 1326, leaving a widow named Christine (*Cal. Close* 1323-7, p. 465).



Note from the Record—*continued*.

Et Adam similiter.

Ideo preceptum est vicecomiti Wygorn(iensi)<sup>1</sup> quod venire faciat hic a die Pasche in xv dies xii etc per quos etc Et qui nec etc ad recognoscendum etc. Quia tam etc.

47. LYNDESEYE v. SUTHE.<sup>2</sup>I.<sup>3</sup><sup>4</sup>*De Cart(is) reddend(is).*<sup>4</sup>

Vn Alice<sup>5</sup> porta soun bref *de Cart(is) redd(endis)* et demanda vne ch(a)r(t)e en la quel fut compris certeynes terres qe vn Robert de <sup>6</sup>Tadis Hille<sup>6</sup> auoit done a<sup>7</sup> Ael .A.<sup>8</sup> et dit qe apres la mort soun ael la ch(a)r(t)e deuynt en la mayn vn .S. qe fut la femme nostre<sup>9</sup> Ael la quele .S. bailla la<sup>10</sup> ch(a)r(t)e a cest(e) Ion.<sup>11</sup>

*Toud.* Ion<sup>12</sup> vous dit <sup>13</sup>qe ele<sup>13</sup> est seisi de la terre<sup>8</sup> compris deynz<sup>14</sup> la ch(a)r(t)e et auoyt<sup>15</sup> la terre <sup>16</sup>par le fet<sup>16</sup> son ael et la ch(a)r(t)e ouesk(e) iugement si vers nous qe sum(us) seisi de la terre la ch(a)r(t)e pussez demander tant<sup>17</sup> qe vous eyez<sup>18</sup> desreygne<sup>19</sup> la terre.

*Scrop.* Nous sumus heir nostre ael de<sup>20</sup> sanke et si vous<sup>21</sup> nous eussez<sup>21</sup> vouche<sup>22</sup> nous perdrom(s) nostre vouch(er) outre<sup>21</sup> si nous ne eym(us) <sup>23</sup>la ch(a)r(t)e<sup>23</sup> *quod durum esset.*<sup>24</sup>

*Toud.* Si nous vous vouch(i)o(m)s<sup>25</sup> vous nauez <sup>26</sup>rens par cas vous ne vendrez<sup>26</sup> iammes et<sup>21</sup> issy perdr(i)o(m)s nous<sup>21</sup> nostre tenance sanz auer a la value, mes si la ch(a)r(t)e dem(ur)ge deuers<sup>27</sup> nous et nous<sup>21</sup> seym(u)s enplede et<sup>28</sup> vous neyez renz.<sup>29</sup> nous poms vouch(er) cum assigne le f(ef)for vostre ael et <sup>30</sup>issy sauuer nostre tenance.<sup>30</sup>

*Scrop Iustice.*<sup>31</sup> En ceo cas. en qicunqe mayn la ch(a)r(t)e seit troue. vers ly la ch(a)r(t)e dem(ur)ra.

*Scrop.*<sup>32</sup> Nostre Ael m(o)rust seisi de la terre etc.<sup>21</sup> et qe la ch(a)r(t)e pus deuynt en la mayn S. et<sup>21</sup> qe S.<sup>21</sup> bailla la<sup>33</sup> ch(a)r(t)e a ceste<sup>34</sup> Ion<sup>35</sup> prest etc.

*Toud.* Qe Ion<sup>36</sup> auoit la ch(a)r(t)e <sup>37</sup>de la<sup>37</sup> liuere soun Ael le<sup>21</sup> f(ef)for<sup>21</sup> prest etc.

<sup>1</sup> Interlined.    <sup>2</sup> Reported by C, P, R, T.    <sup>3</sup> From C. Compared with T.  
<sup>4-4</sup> Om. T.    <sup>5</sup> A. T.    <sup>6-6</sup> Casthulle T.    <sup>7</sup> al T.    <sup>8</sup> Add: etc. T.    <sup>9</sup> le T.  
<sup>10</sup> ceste T.    <sup>11</sup> Ioh. etc. T.    <sup>12</sup> Ioh. T.    <sup>13-13</sup> qil T.    <sup>14</sup> en T.    <sup>15</sup> ad T.  
<sup>16-16</sup> del feffement T.    <sup>17</sup> auant ceo T.    <sup>18</sup> auetz T.    <sup>19</sup> dreyne T.  
<sup>20</sup> du T.    <sup>21</sup> Om. T.    <sup>22</sup> vouch(oms) T.    <sup>23-23</sup> nostre vouch(er) T.    <sup>24</sup> est T.  
<sup>25</sup> Add: par cas T.    <sup>26-26</sup> rien vous nauendrez T.    <sup>27</sup> vers T.    <sup>28</sup> si T.  
<sup>29</sup> rien T.    <sup>30-30</sup> sic auer nostre estat T.    <sup>31</sup> sire T.    <sup>32</sup> Add: qe T.    <sup>33</sup> celle T.  
<sup>34</sup> celuy T.    <sup>35</sup> Iohan T.    <sup>36</sup> Ioh. T.    <sup>37-37</sup> del T.

**Note from the Record**—*continued*.

And Adam likewise.

Therefore the sheriff of Worcestershire was commanded that he cause to come here on the quindene of Easter twelve etc., by whom etc., and who are neither etc., to find etc. because both etc.

47. LYNDESEYE *v.* SUTH.

## I.

*De cartis reddendis.*

One Alice brought her writ for the return of charters and demanded a charter in which were comprised certain lands which one Peter of Cathale had given to the grandfather of Alice ; and she said that after the death of her grandfather the charter came into the hand of one Goditha, who had been the wife of our grandfather, and that Goditha bailed the charter to this Agnes.

*Toudeby.* Agnes tells you that she is seised of the land comprised in the charter, and she has had the land by the deed of her grandfather, and the charter with (it). Judgment whether you can demand the charter against us who are seised of the land, before<sup>1</sup> you have claimed the land.

*Scrope.* We are heiress of our grandfather of the blood and if <sup>2</sup>we should vouch<sup>2</sup> we should lose our voucher, if we did not have the charter, and that would be a hardship.

*Toudeby.* If we did vouch you, you have nothing, perhaps you would never come and thus we should lose our tenancy without receiving the value, but if the charter remain with us and if we be impleaded and if you have nothing, we can vouch, as assignee, the feoffor of your grandfather, and (we can) thus save our tenancy.

SCROPE J. In this case, in whosoever hand the charter be found, in his hand the charter will remain.

*Scrope.* Our grandfather died seised of the land etc. And ready etc. that the charter afterwards came into the hand of Goditha and that Goditha bailed the charter to this Agnes.

*Toudeby.* That Agnes had the charter by the livery of her grandfather, (her) feoffor.<sup>3</sup> Ready etc.

<sup>1</sup> Supplied from *T*.

had vouched us.'

<sup>2-2</sup> This translation is based on *T*.  
The passage in *C* would run : 'if you

<sup>3</sup> This is omitted in *T* and, it seems, rightly so.



II.<sup>1</sup><sup>2</sup>*Detentio Cartarum.*

Si ieo baile mes chateux a B. a garder et puis mesme les chateux deuenent en la mayn dautry qe ne soit pas lexeuteur .B. ieo naueray pas accion vers autre qe vers B. ou vers ces executeurs. autre est de Carta.<sup>2</sup>

Alicie<sup>3</sup> de Lyndeseye<sup>4</sup> porta soun bref de tenue<sup>5</sup> des ch(a)r(te)s etc. E conta<sup>6</sup> qe vn Godf.<sup>7</sup> <sup>8</sup>en happa<sup>8</sup> la ch(a)r(t)e ouege autres chateus.<sup>9</sup> apres la mort soun auncestre qe heir etc. la quele Godef.<sup>10</sup> bailla la ch(a)r(t)e a cesti agn. vers qe nostre bref est porte.

*Toudoun.*<sup>11</sup> Vous nauez pas moustre en conte contaunt qe vous nous baillastes la ch(a)r(t)e. ne qe nous la resvm(es) del baill(if)<sup>12</sup> asqun de vos auncestres. iugement si vous deuez atiel conte estre receu.

*Scrop.* Si vous me diss(eisseriez) et enportes<sup>13</sup> mes ch(a)r(te)s et ieo porte moun bref et demanda mesme les ch(a)r(te)s ceo nest mye response a moun bref qe ieo ne vous baillay nulle ch(a)r(t)e.<sup>14</sup> Item si vous t(r)o(u)ieiez<sup>15</sup> mes ch(a)r(t)es. vous r(esponderiez) de la detenue iugement si nostre conte etc.

*Toud.* Nous vous dioms qe vostre Ael nous enfeoffa de mesme les tenemenz qe sount compris en la ch(a)r(te) laquele vous demandez. par vertue de quele ch(a)r(t)e nostre garr(antie) voch(er) nous est reserue et de m(esme) les tenemenz play est pendant. si einz dount si nous diliuerassoms la ch(a)r(t)e nous perdroms nostre voucher. et cela voloms auerrer par qanqe cete court agard. etc iugement sil puisse de cel ch(a)r(t)e uers nous auer accoun (*sic*).

*Scrop.* Nostre Ael morust seisi de mesme les tenemenz compris en la ch(a)r(te) e Godefeld vous bailla mesme la ch(a)r(te) prest etc.

*Et alii econtra.*

Inquisitio.

<sup>16</sup>*Ideo etc.*<sup>16</sup>

## Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 143 recto. Lincolnshire.  
Written by Luding'.

Agnes que fuit vxor Willelmi Suth, summonita fuit ad respondendum Alicie filie Rogeri de Lyndeseye de placito quod reddat ei quandam cartam quam ei iniuste detinet etc. Et vnde dicit quod cum quidam Petrus de Cathale feoffasset quendam Rogerum de Lyndesey aum predictae Alicie cuius heres

<sup>1</sup> From *P.* Compared with *R.*    <sup>2-2</sup> Detenue des chartes *R.*    <sup>3</sup> Alice *R.*  
<sup>4</sup> Lindeseye *R.*    <sup>5</sup> detenue *R.*    <sup>6</sup> content *R.*    <sup>7</sup> Godfih' *R.*    <sup>8-8</sup> bailla *R.*  
<sup>9</sup> chartes *R.*    <sup>10</sup> Godlf. *R.*    <sup>11</sup> *Toud.* *R.*    <sup>12</sup> bail *R.*    <sup>13</sup> enportates *R.*  
<sup>14</sup> *Add*: nent plus par de sa *R.*    <sup>15</sup> trouez *R.*    <sup>16-16</sup> *Om.* *R.*

## II.

## Detinue of charters.

If I bail my chattels to B. to guard and then the same chattels come into the hand of another who is not the executor of B., I shall not have an action against another than B. or his executors. It is otherwise with a charter.

Alice of Lyndeseye brought her writ of detinue of charters etc. and counted that after the death of her ancestor, whose heir etc., one Goditha had seized the charter together with other chattels, and that Goditha had bailed the charter to this Agnes against whom our writ is brought.

*Toudeby.* In counting the count you have not shown that you bailed the charter to us, or that we received it from the bailee of any of your ancestors. Judgment whether you ought to be received to such a count.

*Scrope.* If you disseise me and carry off my charters and I bring my writ and demand these same charters, it is (then) no answer to my writ (to say) that I did not bail you any charter. Likewise if you should find my charters you would answer for the detinue. Judgment whether our count etc.

*Toudeby.* We tell you that your grandfather enfeoffed us of the same tenements which are comprised in the charter which you demand, and by virtue of that charter there is reserved to us our voucher to warranty. And (a<sup>1</sup>) plea is pending here as to the same tenements. Therefore, if we were to deliver the charter we would lose our voucher. And this we are ready to aver in whatever (way) this Court awards etc. Judgment whether he can have an action against us for that charter.

*Scrope.* Our grandfather died seised of the same tenements comprised in the charter and Goditha bailed the same charter to you. Ready etc.

Issue joined.

Therefore etc.

Inquisition.

## Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 143 recto. Lincolnshire.  
Written by Luding'.

Agnes widow of William Suth was summoned to answer Alice the daughter of Roger of Lyndeseye in a plea that she render her a certain charter which unjustly she detains from her etc. And concerning this matter she says that whereas one Peter of Cathale had enfeoffed one Roger of Lyndesey,

<sup>1</sup> What is probably meant is some dant (Agnes) is sued and vouches to other plea in which the same defen- warranty.



Note from the Record—*continued*.

ipsa est de vno mesuagio et vna bouata terre cum pertinenciis in Golkesby et Aysterby per cartam suam vnde ipsa modo queritur, que quidem carta post mortem predicti Rogeri aui etc. simul cum aliis munimentis que fuerunt ipsius Rogeri deuenit in seisinam cuiusdam Godithe que fuit vxor predicti Rogeri aui etc. matris predictae Agnetis, Et postmodum in seisinam predictae Agnetis per liberacionem ipsius Godithe etc. Ita quod predicta Alicia sepius requisit predictam Agnetem quod ei liberaret predictam cartam, predicta Agnes cartam illam ei hactenus iniuste detinuit et reddere contradixit vnde dicit quod deteriorata est et dampnum habet ad valenciam viginti librarum. Et inde producit sectam etc.

Et Agnes per Eudonem de Billesby attornatum suum venit Et defendit vim et Iniuriam quando etc. Et dicit quod predicta Alicia iniuste queritur Dicit enim quod predictus Rogerus auus etc. de seisina sua feoffauit ipsam Agnetem de predictis mesuagio et terra Tenendis sibi et heredibus suis etc. et dicit quod idem Rogerus tempore feoffamenti predicti liberauit ei predictam cartam quam inde habuit de predicto Petro feoffatore suo Et hoc paratus (*sic*) est verificare etc et petit iudicium etc.

Et Alicia dicit quod predictus Rogerus auus etc nu(n)cquam feoffauit ipsam Agnetem de predictis tenementis Immo inde obiit seisitus in dominico suo vt defeodo etc Ita quod predicta Goditha mater ipsius Agnetis ad cuius manus predicta carta post mortem predicti Rogeri vt predictum est deuenit: liberauit predictae Agneti predictam cartam etc Et hoc petit quod inquiratur per patriam etc.

Et Agnes dicit quod ipsa non habuit predictam cartam per ipsam Goditham Immo ex liberacione predicti Rogeri aui etc in forma predicta Et de hoc ponit se super patriam.

Et Alicia similiter.

Ideo preceptum est vicecomiti quod venire faciat hic a die Pasche in xv dies xii etc per quos etc Et qui nec etc. Quia tam etc.

48. CROST *v.* HOLM.<sup>1</sup>I.<sup>2</sup>

De medio <sup>3</sup>vide infra eodem termino.<sup>3</sup>

Iohan <sup>4</sup>de Crost de Holm<sup>4</sup> porta soun bref de Meen vers vn Henry etc. et dist quil tient de ly certeynz tenemenz en Paulescholyn<sup>5</sup> par

<sup>1</sup> Reported by *C*, *P* (twice), *R*, *T*.      <sup>2</sup> From *P* (first version). Compared with *R*.      <sup>3-3</sup> This is a later addition in *P* and refers to the second version. It is omitted in *R*.      <sup>4-4</sup> Holyne *R*.      <sup>5</sup> Paulesholte *R*.

**Note from the Record**—*continued*.

grandfather of the said Alice, whose heiress she is, of one messuage and one bovate of land with the appurtenances in Golkesby and Esterby, by his charter as to which she complains now, and (whereas) that charter after the death of the said Roger, grandfather etc., together with other documents which had belonged to the said Roger, had come into the seisin of one Goditha who had been the wife of the said Roger grandfather etc., mother of the said Agnes,<sup>1</sup> and afterwards into the seisin of the said Agnes, by the delivery by that same Goditha etc., so that the said Alice did repeatedly request the said Agnes to deliver to her the said charter,—(yet) the said Agnes has hitherto unjustly detained from her the said charter and has refused to render it, whereby she says that she has suffered loss and has damage to the value of £20. And as to this she produces suit etc.

And Agnes comes by Eudes of Billesby, her attorney, and denies force and wrong when etc. And she says that the said Alice does unjustly complain, for she says that the said Roger, grandfather etc., of his seisin did enfeoff her, the said Agnes, of the said messuage and land, to be held to herself and to her heirs etc. And she says that the same Roger at the time of the said feoffment delivered to her the said charter, which hence she has had from the said Peter, her feoffor. And this she is ready to aver etc. and she demands judgment etc.

And Alice says that the said Roger, grandfather etc., did never enfeoff the said Agnes of the said tenements, but died seised thereof in his demesne as of fee etc., so that the said Goditha, mother of the said Agnes, to whose hands the said charter had come (as has been said above) after the death of the said Roger, did deliver to the said Agnes the said charter etc. And she prays that this be inquired by the country etc.

And Agnes says that she did not have the said charter by the said Goditha, but by the delivery by the said Roger, grandfather etc. in the said form. And as to this she puts herself upon the country.

And Alice likewise.

Therefore the sheriff was commanded that he cause to come here on the quindene of Easter twelve etc. by whom etc. and who are neither etc. because both etc.

48. CROST *v.* HOLME.

## I.

Writ of mesne. See below in the same term.<sup>2</sup>

John in le Crost of Holme brought his writ of mesne against one Thomas<sup>3</sup> etc. and said that he holds of him certain tenements in Paull

<sup>1</sup> It seems a reasonable inference that Alice's mother was a daughter of Roger by a first wife, Agnes a daughter of (Goditha) the second wife.

<sup>2</sup> This relates to Version II. See note 3 on the opposite page.

<sup>3</sup> In 1312 Thomas of Holme, a

merchant of Beverley, was paid in wool for wine bought from him for the King (*Cal. Close* 1307-13. p. 395). In 1324 he was deputed by the sheriff to raise money in Holderness, and was assaulted at Beverley (*Cal. Pat.* 1321-4, p. 454).



les seruicez de xxii<sup>1</sup> et iiij. d. par an pur les ques seruicez il ly deit aquiter etc. la vint nostre seigneur le Roy et ly destr(eint) pur feaute etc.

*Heidoun.* La ou vous demaundez lacquit(ance) de seruicez issaunz. des tenemenz qe vous tenez. de nous en Pauleselm<sup>2</sup> la dioms nous qe Paul(eselm) nest pas ville einz est Hamele de F. et ceo est bref de dreit. et voit estre porte en certeyne ville, iugement du bref qar si vous fuissez ore ademaunder le demesne saunz ceo. qe vostre bref fut conceu en certeyne ville il abatereit auxi de cest part.

*Denoun.* Il nad riens en demaunde forge aquit(ance)<sup>3</sup> des seruices <sup>4</sup>en queu<sup>4</sup> cas saunz nomer certeyne ville. le bref est assez bon.

*Scrop Iustice.* Le bref est assez bon ditez outre qar vostre semblaunce qe vous fetes ne lie pas.

*Heidoun.* Quei auez del aquit(ance).

*Denom.* Vous estes seisi de seruicez. pur lequeus vous et vos auncestres<sup>5</sup> nous et nos auncestres prest etc.

*Heidoun.* Aquit(aunce) est en le dreit. et sonne en especialte de<sup>6</sup> fet.<sup>6</sup> et il ne mustre nul <sup>7</sup>fet auaunt<sup>7</sup> de nous ne de nul<sup>6</sup> de<sup>6</sup> nos auncetres qe nous lie. <sup>8</sup>al aquit(ance)<sup>8</sup> iugement si saunz mustrer especialte puissez de vers nous lacquit(ance) dereign(er).

*Denoun.* Vous estes seisi de mesme la fealte. par my nostre meyn pus<sup>9</sup> la quele nous sumes destr(eint) et ceo voloms auerer. iugement si etc.

*Berr.* Il dist qe vous estus seisi de mesme les seruices par my sa meyn pus<sup>9</sup> les queus vous ly deit<sup>10</sup> aquiter. dites nous adeprimes. si uous clames riens en les seruices. ou noun.

*Heidon.* Sire nous vous dioms qil tient de nous par Homage fealte et par les seruices de xxii<sup>11</sup> s. et vi<sup>12</sup> d.<sup>13</sup> et par seute a nostre curt de C. de iii simeins etc.<sup>14</sup> des queus seruices. nos auncestres vnt este seisi par my sa meyn et par my la meyn ces auncestres. par quei nous demaundoms iugement sil puce lacquit(ance) dereigner. vers nous saunz ceo quil ne voile mesme les seruices conustre.<sup>15</sup> sil ne moustre asqun especialte qe nous lie a lacquit(ance).

*Denoun.* La nature de cesti bref. nest pas a conustre les seruices. <sup>16</sup>ne a recouerir<sup>16</sup> mes a dereigner. la aquit(ance) des seruices. dount si <sup>17</sup>nous tenoms de vous<sup>17</sup> par plus de seruices auxi com vous dites com nous ne le grantoms point. si est remedie done par voie de destr(esce). a recouerir les seruices. ou par autres brefs qe sunt en les cas ordeyne et

<sup>1</sup> xxiiii s. R.      <sup>2</sup> Paulesholte R.      <sup>3</sup> aquitaunce R.      <sup>4-4</sup> ou en R.  
<sup>5</sup> Add: ount aquite R.      <sup>6</sup> Om. R.      <sup>7-7</sup> especialte R.      <sup>8-8</sup> ala quiteclam(ance) R.  
<sup>9</sup> pur R.      <sup>10</sup> deuert R.      <sup>11</sup> xxiiii R.      <sup>12</sup> iiii R.      <sup>13</sup> Add: par an R.  
<sup>14</sup> en III sem(eines) R.      <sup>15</sup> Add: ou R.      <sup>16-16</sup> com vous dites etc. R.  
<sup>17-17</sup> uous tenet de nous R.

Holme, by the services of 22s. 4d.<sup>1</sup> a year for all services, and of those services he ought to acquit him etc. now there came our Lord the King and distrained him for fealty etc.

*Hedon.* Whereas you demand the acquittal of services issuing from the tenements which you hold of us in Paull Holme, we tell you that Paull Holme is not a vill but is a hamlet of F., and this is a writ of right and must be brought in a certain vill. Judgment of the writ. For if you were to demand now the demesne without having your writ conceived in a certain vill, it would abate. The same is true in this case.

*Denom.* He demands nothing except acquittal of services and in such a case the writ is good enough without mentioning a certain vill.

SCROPE J. The writ is good enough. Say something else. For the analogy which you are (trying to establish) does not work.

*Hedon.* What have you (to say) as to the acquittal?

*Denom.* You are seised of services for which you and your ancestors have <sup>2</sup>acquitted<sup>2</sup> us and our ancestors. Ready etc.

*Hedon.* Acquittal is a matter of right and requires specialty,<sup>3</sup> a deed, and he does not show any deed by us or by any of our ancestors, which would bind us to the acquittal. Judgment whether you can deraign the acquittal against us without showing specialty.

*Denom.* You are seised by our hand of the same fealty for<sup>4</sup> which we are distrained. And we are willing to aver this. Judgment whether etc.

BEREFORD C.J. He says that you are seised by his hand of the same services of which you ought to acquit him. Tell us first of all whether you claim anything in the services, or no.

*Hedon.* Sir, we tell you that he holds of us by homage fealty and by the services of 22s. 6d. and by the suit at our court of C. from three weeks etc., and of these services our ancestors have been seised by his hand and by the hand of his ancestors. Therefore we pray judgment whether he can deraign the acquittal against us without making conusance of the same services, unless he show some specialty which would bind us to the acquittal.

*Denom.* The nature of this writ is not (such that one need) make conusance of the services, or recover, but to deraign the acquittal of services. Therefore if we hold from you by more services, as you say, (which we do not grant at all,) then a remedy is given you, (namely you can) recover the services by way of distress or by other writs

<sup>1</sup> Supplied from the Record.

<sup>2-2</sup> Supplied from *R.*

<sup>3</sup> *Or* : sounds in specialty, calls for specialty.

<sup>4</sup> Supplied from *R.*



noun point par bref de Meen et del houre qe nous sumes destr(eint)<sup>1</sup> par vostre defaute par<sup>1</sup> mesme les services de queus<sup>2</sup> memes estes seisi par my nostre mayn la quele seisine vous mesmes auez conu en court demaundoms iugement si vous nous nedeuez aquiter.

*Berr.* Mes il dist qe vous tenez de ly par plus de services. qe vous nauez conu et sil entra en laquit(ance) simplement sanz protestacioun fere. et fut autre fois par voie. <sup>3</sup>de auoier(ie) et<sup>3</sup> demaunder mesme les services ce ly greuerait. et pur ceo fet il protestacioun.

*Denoun.* Seit la protestacioun entre qar par cesti bref ne sera ieo mye chace. de graunter les services. ne de conustre.

*Heidoun.* Nous prioms qe la protestacioun seit entre.

*Et sic fuit.*

<sup>4</sup>E pus dist nent destr(eint) par sa defaute.

*Ideo etc.*<sup>4</sup>

## II.<sup>5</sup>

<sup>6</sup>De medio quia Rex distringit. vbi patet quod iacet breue in hamella.<sup>6</sup>

<sup>7</sup>Iohan <sup>8</sup>atte Cros de Holme<sup>8</sup> porta son bref de acquit(aunce)<sup>9</sup> vers Thomas <sup>10</sup>de Holme<sup>10</sup> et dist qe atort <sup>11</sup>ne luy aquit(e)<sup>11</sup> de service qe nostre seignur le Roi luy demaunde del<sup>12</sup> fraunk tenement <sup>13</sup>qe de luy tient en paul holme et dit qil tient de luy certeynz tenemenz par fealte. et par les services de xxij. *d.* par an etc. nostre seignur le Roi luy destreynt pur seute.<sup>13</sup>

*Hedoun.* Cest vn bref de dreit qe voet estre porte de ville et paulishille<sup>14</sup> nest pas vile eynz est hamele iugement du bref.

*Denoun.* Coment qe ceo <sup>15</sup>vn bref<sup>15</sup> de dreit nous vous surmettoms vn tort qe <sup>16</sup>nous vous suffret<sup>16</sup> estre destreynt pur<sup>17</sup> defaute de vostre<sup>18</sup> acquit(aunce).

*Hedoun.* Le *precipe quod reddat* ne gist pas en hamel<sup>19</sup> *nec hoc breue.*

*Ber.* Dites outre.<sup>7</sup>

*Hedoun.* Quei auet del acquit(aunce).

<sup>20</sup>*Denom.* Seisi de noz services et dautres services dount nous demaundoms lacquitanz.

*Berr.* Il vous couent dire plus.<sup>20</sup>

<sup>1</sup> pur *R.*    <sup>2</sup> *Add*: vous *R.*    <sup>3-3</sup> daction a *R.*    <sup>4-4</sup> *Om.* *R.*    <sup>5</sup> From *P* (second version). Compared with *C*, *T*. See below note <sup>20-20</sup>.    <sup>6-6</sup> De medio vbi Rex distrinxit *C.* *Om.* *T.*    <sup>7-7</sup> *Om.* *C.*    <sup>8-8</sup> Atterost *T.*    <sup>9</sup> meen *T.*    <sup>10-10</sup> le fitz Aleyn de Holyn *T.*    <sup>11-11</sup> luy seoffre estre destreint etc. *T.*    <sup>12</sup> de soun *T.*    <sup>13-13</sup> *Om.* *T.*    <sup>14</sup> Porlyn *T.*    <sup>15-15</sup> bref est *T.*    <sup>16-16</sup> vous nous sufristes *T.*    <sup>17</sup> par *T.*    <sup>18</sup> *Om.* *T.*    <sup>19</sup> *Add*: ergo *T.*    <sup>20-20</sup> This is taken from *C*. It is omitted in *P*. *T* has similar statements.

which are ordained for the cases, and not by a writ of mesne. And since we are distrained by your default for the same services of which you are seised by our hand, and you yourselves have made in court conusance of the seisin, we demand judgment whether you ought not to acquit us.

BEREFORD C.J. But he says that you hold of him by more services than you have acknowledged, and if he were to enter into the acquittal simply (and) without making protestation, and if he were some other time to<sup>1</sup> demand by<sup>1</sup> way of<sup>1</sup> action<sup>1</sup> the same services, that (acquittal without protestation) would hurt him. And that is why he makes his protestation.

*Denom.* Let the protestation be entered, for I shall not be driven by this writ to grant the services or to make conusance.

*Hedon.* We pray that the protestation be entered.

And so it was.

And afterwards he (the counsel for the defendant) said: Not distrained by (the defendant's) default.

Therefore etc.

## II.

Writ of mesne because the King has distrained. Where it appears that the writ lies in a hamlet.

John in le Crost of Holme brought his writ of acquittal against Thomas of Holme and said that wrongfully he did not acquit him of the service which our Lord the King demands from him for the freehold which he holds of him in Paull Holme. And he said that he holds of him certain tenements by fealty and by the services of 22*d.* a year. (And) our Lord the King distrains him for suit.

*Hedon.* This is a writ of right which ought to be brought (in) a vill, and Paull Holme is not a vill but is a hamlet. Judgment of the writ.

*Denom.* Albeit that this is a writ of right, we charge you with a wrong, (namely,) that you have suffered us to be distrained for default of your acquittal.

*Hedon.* The *precipe quod reddat* does not lie in a hamlet. Neither does this writ.

BEREFORD C.J. Say something else.

*Hedon.* What have you (to say) as to the acquittal?

*Denom.* (They have been) seised of our services and of other<sup>2</sup> services of which we demand the acquittal.

BEREFORD C.J. You must say more.

<sup>1</sup> Supplied from *R.*    <sup>2</sup> These probably stand for 'services of our ancestors.'



*Denoun.* Seisi *ut supra* et luy et ces Auncestres vnt aquite nous et nos auncestres du temps dount il nad memorie prest etc.

*Hedoun.* Ceo ne poet estre qe Alex<sup>1</sup> nostre pere fut purchasur <sup>2</sup>de ces seruices et<sup>2</sup> de la seignurie <sup>3</sup>de denz le lv<sup>3</sup> aunz.

*Denoun.* Vous et vos auncestres et les seignurs de mesme le fee vnt aquite nous<sup>4</sup> etc.

Et<sup>5</sup> fut chace a respoundre *licet pater suus erat perquisitor*.

*Hedoun.* La ou il ad dit qil tient de nous par fealte et<sup>4</sup> par <sup>6</sup>les seruices de<sup>6</sup> xxii. s. par an pur touz seruices. sire il tient de nous par<sup>7</sup> homage et seute a nostre Court de Paulishille<sup>8</sup> de iii. semaines en iii. semaines. des queus seruices nous sumes seisi par my sa meyn etc. et sil voet les seruices conustre nous luy r(espondroms) asset.

*Ber.* Doncqe grauntet si<sup>9</sup> laquit(aunce).

*Hedoun.* Sire oyl pus<sup>10</sup> les seruices qe nous auoms dit.

*Ber.* Nous ne plederoms<sup>11</sup> pas a ceo bref les seruices.

*Hedoun.* Nynt destreynt pur nostre defaute prest etc.<sup>12</sup>

#### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 307 verso. Yorkshire.  
Written by Luding<sup>1</sup>.

Thomas filius Alex(andr)i de Holm in misericordia pro pluribus defaltis etc.

Idem Thomas summonitus fuit ad respondendum Iohanni in le Crost de placito quod acquietet ipsum de seruicio quod dominus Rex ab eo exigit de libero tenemento suo quod de prefato Thoma tenet in Paghelholm vnde idem Thomas qui medius est inter ipsum Regem et prefatum Iohannem eum acquietare debet etc Et vnde idem Iohannes per attornatum suum dicit quod cum ipse teneat de prefato Thoma vnum mesuagium et quatuor bouatas terre cum pertinenciis in predicta villa per fidelitatem et seruicium viginti et duorum solidorum duorum denariorum et obolu(m) per annum pro omni seruicio : de quibus seruiciis idem Thomas ipsum acquietare debet uersus quoscunque : Dominus Rex distringit ipsum exigendo ab eo fidelitatem de predictis tenementis per defectum acquietancie etc vnde dicit quod deterioratus est et dampnum habet ad valenciam viginti librarum Et inde producit sectam etc.

Et Thomas per attornatum suum venit Et defendit vim et iniuriam qu(ando) etc Et petit sibi ostendi per quod eum acquietare debet etc.

<sup>1</sup> A. C. Aleyn T.      <sup>2-2</sup> Om. T.      <sup>3-3</sup> deinz cez xv. C, T.      <sup>4-4</sup> Om. T.  
<sup>5</sup> Add: a ceo C.      <sup>6-6</sup> Om. C.      <sup>7</sup> Add: ceux seruices et par T.      <sup>8</sup> P. C, T.  
<sup>9</sup> vous C, T.      <sup>10</sup> pur C, T.      <sup>11</sup> pledoms C, T.      <sup>12</sup> Add: et alii econtra T.

*Denom.* (They have been) seised (as above); and he and his ancestors have acquitted us and our ancestors from a time whereof memory does not run. Ready etc.

*Hedon.* That cannot be, for Alexander, our father, was purchaser of these services and of the lordship, within these <sup>1</sup>(last) fifteen<sup>1</sup> years.

*Denom.* You and your ancestors and the lords of the same fee have acquitted us etc.

And he was driven to answer although his father had been a purchaser.

*Hedon.* Whereas he has said that he holds of us by fealty and by the services of 22s. a year for all services, Sir, he holds of us by homage and suit at our court of Paull Holme from three weeks to three weeks. And of these services we are seised by his hand etc. And if he wants to make conusance of the services we shall answer him enough.

BEREFORD C.J. Then you do grant the acquittal?

*Hedon.* Yes, Sir: for<sup>2</sup> the services which we have mentioned.

BEREFORD C.J. We shall not plead as to the services in this writ.

*Hedon.* Not distrained by our default. Ready etc.

#### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 307 verso. Yorkshire.  
Written by Luding'.

Thomas the son of Alexander of Holme in mercy for several defaults etc.

The same Thomas was summoned to answer John in le Crost in a plea that he acquit him of the service which our Lord the King exacts from him for his freehold, which he holds in Paull Holme of the said Thomas, and of which (service) the said Thomas who is mesne between the said King and the said John ought to acquit him etc. And concerning this the said John says by his attorney that whereas he holds of the said Thomas one messuage and four bovates of land with the appurtenances in the said vill, by fealty and by the service of 22s. 2½d. a year for all service, and (whereas) the said Thomas ought to acquit him of these services against everybody: our Lord the King distrains him, exacting from him fealty for the said tenements by default of acquittal etc. whereby he says that he has suffered loss and has damage to the amount of £20. And as to this he produces suit etc.

And Thomas comes by his attorney, and denies force and wrong when etc. And he prays that it be shown him why he ought to acquit him etc.

<sup>1-1</sup> Supplied from C, T.

<sup>2</sup> Supplied from C, T.



**Note from the Record—continued.**

Et Iohannes dicit quod predictus Thomas est seisitus de fidelitate et ser(uiciis) eiusdem Iohannis pro predictis tenementis, et de quibus seruiciis predictus Thomas et alii habentes statum quem idem Thomas modo habet in predictis seruiciis acquietar(unt) ipsum Iohannem et antecessores suos semper hucusque et ea ratione tenetur eum acquietare etc.

Et Thomas dicit quod vbi predictus Iohannes in narrando dicit quod ipse tenet predicta tenementa per fidelitatem et seruic(ium) viginti et duorum solidorum duorum denariorum et oboli: Idem Iohannes tenet de eo predicta tenementa per homagium et sectam faciend(am) ad Curiam ipsius Iohannis de Paghelholm de tribus septimanis in tres septimanas et per predicta alia seruicia etc. et bene cognoscit quod ipsum acquietare debet pro predictis seruiciis etc. set bene defendit quod idem Iohannes non distringitur etc. pro defectu acquietancie etc. Et de hoc ponit se super patriam.

Et Iohannes similiter.

Ideo preceptum est vicecomiti quod venire faciat hic a die Pasche in tres septimanas xii etc. per quos etc. Et qui nec etc. Quia tam etc.

49. THE BISHOP OF EXETER *v.* THOMAS THE  
ARCHDEACON.<sup>1</sup>

I.<sup>2</sup>

<sup>3</sup>De garde de chatel eschay en autri tenps.<sup>3</sup>

Wauter<sup>4</sup> levesqe de Excestre porta soun bref de dreit de garde deuers Thomas le Ercedeke<sup>5</sup> et demaunda le<sup>6</sup> corps Ion<sup>7</sup> et fitz et heir Ion<sup>7</sup>

<sup>1</sup> Reported by *B, E, F, G, M, X*. This is Vulg. 7.    <sup>2</sup> From *G*. Compared with *F*.    <sup>3-3</sup> The headnote in *F* runs: Bref de dreit de garde qe vn Euesqe porta vers le gardein de fet qe vocha agaunt sun lessour, qi vynt et dit qe la garde escheit en temps sun predecessour et partant fut ceo chatel, de qei accioun apent a les executours le predecessour. et de ceo fut ouste pur ceo qe ceo est vn dreit tanqe ele seit derene.    <sup>4</sup> Walter *F*.    <sup>5</sup> Ercedekene *F*.    <sup>6</sup> la garde du *F*.    <sup>7</sup> Johan *F*.

**Note from the Record—continued.**

And John says that the said Thomas is seised of the fealty and the services of the said John for the said tenements, and of those services the said Thomas and others having the estate which the said Thomas now has in the said services have hitherto always acquitted him the said John and his ancestors, and by that reason he is bound to acquit him etc.

And Thomas says that whereas the said John in counting says that he holds the said tenements by fealty and the service of 22s. 2½*d.*, the said John holds of him the said tenements by homage and by doing suit at the court of the said Thomas of Paull Holme from three weeks to three weeks and by the said other services etc. And he fully admits that he ought to acquit him for the said services etc., but he entirely denies that the said John is distrained etc. for default of acquittance etc. And as to this he puts himself upon the country.

And John likewise.

Therefore the sheriff was commanded that he cause to come here in three weeks from Easter twelve etc. by whom etc. and who are neither etc. Because both etc.

#### 49. THE BISHOP OF EXETER *v.* THOMAS THE ARCHDEACON.

##### I.

Writ of wardship. Case of a chattel escheated in another (bishop)'s time.

Walter, Bishop of Exeter,<sup>1</sup> brought his writ of wardship against Thomas the Archdeacon<sup>2</sup> and demanded the body of John the son and

<sup>1</sup> Walter of Stapledon, Bishop of Exeter 1308-1326 (Stubbs, *Reg. Sac. Angl.*).

<sup>2</sup> Thomas le Arcedeakone was Keeper of the Peace in Cornwall 1308-12 (*Cal. Pat.* 1307-13, pp. 54, 473), and in 1309 rescued the sheriff and his bailiffs from the men of Blackmoor, who were besieging them in St. Columb Major (*ibid.* p. 173). He was a commissioner to inquire concerning unlawful prizes in the same year (*ibid.* p. 250). From 1310-14 he was a commissioner of oyer and terminer, especially in regard to the complaints of Spanish and Portuguese merchants, such as the owners of the *Maudeleyne* and *St. Bartholomew's Ship*, which were taken as wreck by certain Cornishmen (*Cal. Pat.* 1307-13, pp. 255-6; 1313-17, p. 143; 1317-21, pp. 604, 605, 609; 1321-4, p. 147; *Cal. Close* 1321-4, p. 410). It was stated in 1315 that Thomas himself was not above this sort of thing, and had captured the *Grace Dieu* off Falmouth (*ibid.* 1313-17, p. 313; 1317-21, p. 94), but these complaints were made after his disgrace. In 1314 he had been ordered to deliver the Castle of Tintagel, which he had held since 1312 (*ibid.* 1307-13, p. 454), to Peter Trevelnargh (*ibid.* 1313-17, pp. 242-3), and an inquiry into his misdeeds as sheriff took place (*ibid.* pp. 243, 313). He was again appointed a commissioner of oyer and terminer in 1321 (*ibid.* 1317-21, p. 604), and was commissioner of array in 1322-3 (*ibid.* 1321-4, pp. 93, 94, 96, 274; *Cal. Close* 1323-7, pp. 548, 718). In 1323-4 he was on the King's service in Gascony (*ibid.* p. 80), and during his



de Arundel<sup>1</sup> et dit qe la garde a ly apent par la reson qe Ion<sup>2</sup> pere lauaundit Ion qi heir etc. tynt certeynz tenemenz de Thomas predecessour mesme cesti Euesqe par homage par feaute et par les seruitz de .iij. fee<sup>3</sup> de cheualier no . . .<sup>4</sup> qaunt lestut<sup>5</sup> . . .<sup>5</sup> etc des ques seruitz Thomas fut seisi par my la mayn<sup>6</sup> Ion etc.<sup>6</sup> et morust en son homage issint apent a ly la garde<sup>7</sup> etc.

Thomas voucha a garrantie vn M.<sup>8</sup> qe vynt en court et garranti par qei leuesqe counta vers ly com vers tenaunt par sa garrantie *vt supra*.

*Scrop.* Nous demaundoms iugement du bref. car vous auet entendu par bref et par counte qe leuesqe demaunde ceste garde qe<sup>9</sup> eschay a ceo qil ad dyt en le tenps Thomas<sup>9</sup> soun predecessour.<sup>10</sup> et demaundoms iugement del hure qe ceste garde nestqe chatel.<sup>11</sup> sia cesti bref de dreit de garde par le quel il bye recuuerir chatel<sup>11</sup> escheu en tenps soun predecessour deyue estre receu.

*West.*<sup>12</sup> Ceo est vn bref de dreit de garde et auoms dyt qe lancestre<sup>13</sup> lenfaunt tynt de nostre predecessour par seruiz de cheualier et morust en soun homage et vous ne poet my dire qe nostre predecessour fut seisi de la garde<sup>14</sup> tanke il veskit.<sup>14</sup> par qei nous demaundoms iugement.

*Scrop.* Nous pernomms nostre excepcion solumment a bref abatre.

*Berr.* Nous lentendoms a bref et a counte.

*Heruy.* Sy leuesqe neyt la garde. qi auera la garde.

*Denom.* Ceo nest ren a nous. il nous suffit sire de abatre soun bref.

*Berr.* Volet demorer en iugement.

*Scrop.* Pernet nos paroles auxi cum nous dioms et nous demurromms volenters. qe nous vous dioms qe ceste garde. qe leuesqe demaunde nest forqe chatel escheu en autri tenps a ceo qil dit et demaundoms iugement si a cesti bref de chatel escheu en autri tenps deuoms respoudre.

*Berr.* Par ceo qe vous fetes vostre conclusion en abatement du bref. vous entendet qil ne deyt my toucher laccioun. mes pernet bone garde vous poet auer vn entendement de la et<sup>15</sup> un autre par de sca.

<sup>1</sup> B. F.   <sup>2</sup> Johan F.   <sup>3</sup> feez F.   <sup>4</sup> nomement F.   <sup>5-5</sup> lescu curt F.   <sup>6-6</sup> lauandit Iohan pere etc cum par my la meyn son verray tenant F.   <sup>7</sup> Add: et lauandit Thomas ly deforce atort et ces damages F.   <sup>8</sup> W. F.   <sup>9-9</sup> chei en tenps Thomas F.   <sup>10</sup> Add: et ceo piert en tant cum il ad dit qe Ion le Pere etc. morust en le homage son predecessur F.   <sup>11-11</sup> Om. F.   <sup>12</sup> Westcote F.   <sup>13</sup> le pere F.   <sup>14-14</sup> en son tenps F.   <sup>15</sup> Add: par auenture nous auoms F.

heir of John of Arundel, and said that the wardship belongs to him for the reason that John the father of the aforesaid John whose heir etc. held certain tenements of Thomas, predecessor of this Bishop, by homage, by fealty, and by the services of three knight's fees, namely,<sup>1</sup> when the scutage<sup>1</sup> runs<sup>1</sup> etc., and of those services Thomas was seised by the hand of John etc. and (John) died in his homage, thus the wardship belongs to him etc.

Thomas vouched to warranty one M(auger), who came into court and warranted. Therefore the Bishop counted against him as against the tenant, upon his warranty, as above.

*Scrope.* We pray judgment of the writ, for you have heard<sup>2</sup> from the writ and from the count that the Bishop demands this wardship which escheated, according to what he said, in the time of Thomas, his predecessor. And since this wardship is only a chattel, we demand judgment whether he ought to be received to this writ of right of wardship, by which he wants to recover a chattel escheated in the time of his predecessor.

*Wescote.* This is a writ of right of wardship, and we have said that the ancestor of the infant held from our predecessor by knight's service and died in his homage, and you cannot say that our predecessor was seised of the wardship while (the father) lived. Therefore we demand judgment.

*Scrope.* We take our exception only (in order) to abate the writ.

BEREFORD C.J. We understand it (to be) to the writ and to the count.

STANTON J. If the Bishop have not the wardship, who shall have the wardship?

*Denom.* That is nothing to us. It is enough for us to abate his writ.

BEREFORD C.J. Do you want to abide judgment?

*Scrope.* Take our words just as we say, and we shall abide willingly. For we tell you that this wardship which the Bishop demands is nothing but a chattel escheated in another's time as he says himself. And we pray judgment whether we ought to answer to this writ (brought) for a chattel escheated in another's time.

BEREFORD C.J. By making your conclusion in abatement of the writ, you mean that he ought not to touch the action. But take good care, for you can have one meaning and perhaps<sup>1</sup> we<sup>1</sup> may have another.

absence his park at Lanyhorn was broken by Ralph Bloyon and others (*ibid.* p. 236); in 1326 he was granted protection for a year (*ibid.* p. 341).

<sup>1</sup> Supplied from *F*.

<sup>2</sup> *Auet entendu* might also be translated 'you understand.'



Nota cam...  
par le bref  
estut.

*Scrop. Vt supra.*

*Berr.* Cest vn dreit tanke il seit fet chatel et pur ceo responez outre.

*Scrop.* <sup>1</sup>Dit qe<sup>1</sup> dioms nous qe Ion<sup>2</sup> pere lenfaunt tynt le manoir de E.<sup>3</sup> de nostre pere par homage etc.<sup>4</sup> des ques nostre pere fut seisi par my la mayn Ion etc.<sup>5</sup> et morust en soun homage et vous dioms qil tynt<sup>6</sup> eygne feffement de nous et de nos auncestres qe de Leuesqe. ou ces predecessours prest etc.

*Pass.* Qil tynt de nous et nos predecessours par eygne feffement qe de ly ou de ces auncestres prest etc.

*Et ideo ad patriam etc.*

## II.<sup>7</sup>

Garde.

Le Euesqe de Excestre porta vn bref de garde vers vn Iohan et demaunda la garde del corps vn A. fitz et heir vn B. par la reson qe mesme cesti B. tynt de son predecessour par seruice de chivaler et morust en son homage.

*Iohan.* Nous vouchoms a garrantie Maug' fitz et heir Iohan de Corneweile qe sera somone etc.

Maug' vint et entra en la garrantie par le fet son pere et fist protestacioun a la Court. qe rien luy fu desc(endu) et r(espondist) outre.

*Scrop.* Cest vn bref de garde ou il ne poet altre chose recouerer si noun chatel et il ad dit qe B. morust en temps son predecessour et demaundoms iugement si de chatel eschu en temps son predecessour poet il accioun auoir.

*Migg.* Nous sumes a recouerer le dreit de nostre Esglise par cesti bref et nostre predecessour ne fu vnke seisi. coment qil morust en son temps. la chose demoert. touz iours en le dreit tanqe ele seit seisie. et par la seisine si est ceo chatel et desicom il ne fu pas seisi demaundoms iugement si nous ne deuoms estre respondu.

*Scrop.* Cel qe vous demaundet nest for qe vn profit issaunt del soil qe naturellement sonne en chatel. le quel escheut en temps vostre predecessour. de qay cez excecuteurs deyuent auoir accioun et noun pas vous et demaundoms iugement.

*Heruy.* Le tenaunt deuie en temps le pere nauera le fuitz accioun

<sup>1-1</sup> dunques vous *F.*    <sup>2</sup> Iohan *F.*    <sup>3</sup> C. *F.*    <sup>4</sup> et par feaute et par les seruicez de ij s. par an et par les seruices du fee de cheualier. nomement qant lescu curt a xl s. *F.*    <sup>5</sup> sun pere cum par mi la meyn son verray tenant *F.*    <sup>6</sup> *Add:* par *F.*    <sup>7</sup> From *E.*

*Scrope* (as above).

BEREFORD C.J. This<sup>1</sup> is a right until it be made a chattel. And therefore answer over.

*Scrope*. Then<sup>2</sup> we tell you<sup>2</sup> that John, father of the infant, held the manor of John, our father, by homage etc. and our father was seised of them by the hand of John etc., and he died in his homage, and we tell you that he held by<sup>2</sup> older feoffment from us and from our ancestors than from the Bishop or his predecessors. Ready etc.

*Passeley*. Ready etc. that he held from us and from our predecessors by older feoffment than from him or from his ancestors.

And therefore to the country etc.

Note . . .  
because the  
writ stood.

## II.

### Wardship.

The Bishop of Exeter brought a writ of wardship against one Thomas and demanded the wardship of the body of one John, son and heir of one John, for the reason that the latter John had held from his predecessor by knight's service and had died in his wardship.

*Thomas*. We vouch to warranty Mauger son and heir of John (of Cornwall<sup>3</sup>) who will be summoned etc.

Mauger came and entered into the warranty according to the deed of his father, and made protestation to the Court that nothing had descended to him, and answered over.

*Scrope*. This is a writ of wardship in which he cannot recover anything else except a chattel, and he said that John (the father) died in the time of his predecessor, and we pray judgment whether he can have an action for a chattel escheated in the time of his predecessor.

*Miggeley*. By this writ we are to recover the right of our church,<sup>4</sup> and our predecessor was never seised although he (John) died in his time. The thing remains always a matter of right until it be made the subject of seisin, and by the seisin this is (turned into) a chattel, and since he was not seised we pray judgment whether we ought not to be answered.

*Scrope*. That which you demand is only a profit issuing from the soil, and that is naturally a chattel, and it escheated in the time of your predecessor, and (it is) his executors (that) ought to have an action for it, and not you. And we pray judgment.

STANTON J. The tenant dies in the time of the father. Will not

<sup>1</sup> *I.e.* the wardship.

<sup>2</sup> Supplied from *F*.

<sup>3</sup> This is added in the text probably

to avoid a confusion of the Johns.

<sup>4</sup> *I.e.* not his personal property.



a demaunder la garde la ou le pere ne fu vnke seisi. certes si auera par gey responez.

*Scrop.* Il tint de Iohan de Corneweile nostre pere par seruice de cheualier et par priorite de feoffement prest dauerer.

*Pas.* Qil tint de nous par seruice de cheualier et par priorite de feoffement prest etc.

*Et alii contra.*

### III.<sup>1</sup>

Bref de Garde porte par vn Evesqe ou il dit qe launcestre lenfaunt murust en le homage son predecessour etc.

William Euesqe dextestre demaunda vers Thomas etc. le heir Iohn le fitz Iohn Walrond<sup>2</sup> qi garde aly appent par la reson qun Iohn son pere tint certain tenements dun Thomas predecessour cesti Euesqe par seruice de Che(ualie)r etc. et morust en son hommage et Thom(as) voucha a garr(antie) vn autre qi vint en Court et entra en la garr(antie) et dit par

*Scrop.* Vous auez entendu coment par bref etc. qe Iohn pere lenfaunt tint de son predecessour etc. et il ad counte qil morust en le homage son predecessour et issint est ceo chatel qil demaunde iugement si de chatel qe chiet en temps son predecessour <sup>3</sup>puisse il rien demaunder.

*Wesc.* De puis qe vous ne poez dedire qe son pere ne tint de nostre predecessour<sup>3</sup> etc. et vous naffirmez autre droit en vostre persone iugement etc.

*Den.* Depuis qe ceo est vn chatel qe vous demaandez qe ne cheut mye en vostre temps etc. coment le vollez vous auoir<sup>4</sup>?

*Wesc.* La garde cheust en temps nostre predecessour et il<sup>5</sup> en son temps ne feut vnqes seisi par qei<sup>6</sup> lexcepcioun est<sup>7</sup> autre forsqe nous ne poms cest accioun vseir.

*Scrop.* *Vt prius.*

*Berr.* Vollez autre dire?

*Scrop.* Si vous ne lagardez il ne deiuent a tiel seisine estre r(espondu) la ou il dit qe le pere lenfaunt morust en le homage son predecessour.

*Berr.* Si vous vollez la demorer qe le r(esponse) qe vous auetz

<sup>1</sup> From *M.* Compared with *B.* Headnote from *B.* <sup>2</sup> Walrand *B.*  
<sup>3-3</sup> *Om. B.* <sup>4</sup> auer *B.* <sup>5</sup> sil *B.* <sup>6</sup> *Om. B.* <sup>7</sup> nest *B.*

the son have an action to demand the wardship, where the father was never seised? Certainly he will. Therefore answer.

*Scrope*. He held of John (of Cornwall), our father, by knight's service and by prior feoffment. Ready to aver (it).

*Passeley*. Ready etc. that he held of us by knight's service and by prior feoffment.

Issue joined.

### III.

Writ of wardship brought by a Bishop, where he said that the ancestor of the infant died in the homage of his predecessor etc.

William, Bishop of Exeter, demanded against Thomas etc. (the body of) the heir of John the son of John of Arundel, whose wardship belongs to him for the reason that one John, his father, held certain tenements of one Thomas, predecessor of this Bishop, by knight's service etc., and died in his homage. Thomas (the defendant) vouched another to warranty. The vouchee came into Court and entered into the warranty and said by

*Scrope*. You have heard how by the writ etc. (they allege) that John the father of the infant held of his predecessor etc. And he has counted that he died in the homage of his predecessor, and thus this is a chattel. (So) that (the defendant-vouchee) prays judgment whether (the plaintiff) can demand anything of a chattel which escheated in the time of his predecessor.

*Wescote*. Judgment etc., since you cannot deny that his father held of our predecessor etc., and you do not affirm (any) other right in your person.

*Denom*. Since that which you demand is a chattel which did not escheat in your time, how is it you want to have it?

*Wescote*. The wardship escheated in the time of our predecessor and he was never seised in his time. Therefore the exception amounts to nothing<sup>1</sup> else save that we cannot use this action.

*Scrope* (as before).

BEREFORD C.J. Do you want to say something else?

*Scrope*. Since he says that the father of the infant died in the homage of his predecessor, he<sup>2</sup> ought not to be answered to such a seisin unless you award it.

BEREFORD C.J. (Be careful<sup>3</sup>) whether you want to abide (judgment on that point); the answer which you have given is to oust

<sup>1</sup> Supplied from *B*.

<sup>2</sup> The verb stands in the plural, the rest of the sentence in the singular.

<sup>3</sup> This is supplied from Version I.

as the text is here obviously defective.



done est a eux tollir accioun qil ne poont autre demonstraunce auoir en le cas etc.

*Scrop.* Si vous agardez nous dirroms assez.

*Berr.* Il couient qe vous deuez etc.<sup>1</sup> nous la prendroms a ceo qele trenche (?)

*Scrop.* *Vt prius etc.*

#### IV.<sup>2</sup>

Garde.

Willem euesqe Dexcestre demaunda vers Th. Erceden Ion fitz et heir Ion Walran qi garde a ly apend pur ceo qe I. piere lenfaunt tynt de S. son predecessour par seruice de cheualier et morust en son homage.

T. voucha L. qi entra en garrantie et dit par

*Scrop* qe a ceo Bref ne deuez estre respondu qar vous supposez qe cest garde fust le chatel vostre predecessour par taunt qe vous supposez qil tynt de luy et morust en son homage.

*Wesc.* Ses executours ne poent auer accioun sil nust este seisi par qey etc.

*Ber.* a *Scrop.* Vostre plee est al accioun veez si vous voilez la demorer.

*Scrop.* Launcestre lenfaunt tynt de nous par priorite etc.

*Alii econtra.*

#### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 66 verso. Cornwall.

Written by Burnedisshe.

Thomas le Arcedeakene summonitus fuit ad respondendum Waltero Episcopo Exoniensi de placito quod reddat ei Iohannem filium et heredem Iohannis de Arundel cuius custodia ad ipsum Episcopum pertinet eo quod predictus Iohannes terram suam de Thoma quondam Episcopo Exoniensi predecessore predicti Episcopi tenuit per seruicium militare etc. Et vnde idem Episcopus per attornatum suum dicit quod cum predictus Iohannes pater etc. tenuisset de predicto Thoma quondam Episcopo etc. Manerium de

<sup>1</sup> la excepcioun B.

<sup>2</sup> From X.

them from the action, for in the case etc. they cannot have another demonstration.

*Scrope*. If you award (so), we shall say enough.

BEREFORD C.J. You must put forward<sup>1</sup> <sup>2</sup>the exception,<sup>2</sup> we shall (take it according to<sup>3</sup>) what it traverses.<sup>4</sup>

*Scrope* (as before etc.)

#### IV.

##### Wardship.

William, Bishop of Exeter, demanded against Thomas, the Archdeacon, John the son and heir of John of Arundel, whose wardship belongs to him for this reason that John, the father of the infant, held of Thomas his predecessor by knight's service and died in his homage.

Thomas vouched Mauger who entered into warranty and said by

*Scrope* that to this writ you ought not to be answered because you suppose that that wardship was the chattel of your predecessor, forasmuch as you suppose that he held of him and died in his homage.

*Wescote*. His executors could not have action if he was not seised, wherefore etc.

BEREFORD C.J. to *Scrope*. Your plea is to the action. See whether you wish to abide there.

*Scrope*. The ancestor of the infant held of us by prior etc.

Issue joined.

#### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 66 verso. Cornwall.  
Written by Burnedisshe.

Thomas the Archdeacon was summoned to answer Walter, Bishop of Exeter, in a plea that he render him John, son and heir of John of Arundel, whose wardship belongs to the said Bishop for this reason that the said John held his land by knight's service from Thomas, sometime Bishop of Exeter,<sup>5</sup> predecessor of the said Bishop etc. And concerning this matter the said Bishop says by his attorney that whereas the said John the father etc. held from the said Thomas sometime Bishop etc. the manor of Lanherne<sup>6</sup> with

<sup>1</sup> Give in the sense of 'state'?

<sup>2-2</sup> Supplied from *B*.

<sup>3</sup> Or: we shall learn.

<sup>4</sup> The reading is doubtful, and so is necessarily the translation.

<sup>5</sup> Thomas Button, Bishop of Exeter 1292-1307.

<sup>6</sup> The manor of Lanherne, which afterwards passed to the Arundels, was held of Bishop Thomas in 1306 by

John of Umfravile in right of Alice his wife (*Feudal Aids*, i, 198, 204, 215), and can therefore have been held only for a very short time by John of Arundel, since he died in the lifetime of the Bishop, who died in 1307. This perhaps explains why Bishop Thomas was never seised of the wardship. (See Report II above.)



**Note from the Record—continued.**

La Herne cum pertinenciis et aduocacionem ecclesie eiusdem manerii et vnum mesuagium vnam carucatam terre centum solidatas redditus cum pertinenciis in villa de sancta Columba maiore, et aduocacionem ecclesie eiusdem ville per homagium fidelitatem et seruicium trium feodorum militis, videlicet ad scutagium domini Regis quadraginta solidorum, cum acciderit, sex libras et ad plus plus et ad minus minus etc de quibus seruiciis Idem Episcopus predecessor etc fuit seisis per manus predicti Iohannis patris etc. qui obiit in homagio ipsius Episcopi predecessoris etc. Et ea ratione predicta Custodia ad ipsum Episcopum nunc pertinet: predictus Thomas custodiam illam ei iniuste deforciat etc. Vnde dicit quod deterioratus est et dampnum habet ad valenciam trescentarum librarum Et inde producit sectam etc.

Et Thomas per attornatum suum venit Et alias vocauit inde ad Warantum Maugerum filium Iohannis filii Laurencii qui modo venit post summonicionem etc per magnam districcione Ideo ipse in misericordia pro pluribus defaultis etc Et idem Maugerus petit sibi ostendi per quod ei warantizare debeat etc.

Et Thomas dicit quod quidam Iohannes filius Laurencii pater predicti Maugeri cuius heres ipse est, concessit et tradidit eidem Thome le Arcedeakene custodiam predicti heredis tenendam vsque ad legitimam etatem etc. Et obligauit se et heredes suos ad war(antizandum) etc per scriptum ipsius Iohannis filii Laurencii quod profert et quod hoc testatur etc. Et petit quod ei warantizet etc.

Et Maugerus bene cognoscit predictum scriptum esse factum predicti Iohannis filii Laurencii patris etc. Et tanquam heres sanguine ei warantizat etc protestando se nichil habere per descensum de predicto Iohanne patre etc Et defendit vim et iniuriam qu(um) etc. Et dicit quod cum predictus Episcopus per breue suum clamat predictam custodiam ad se pertinere ratione quod predictus Iohannes pater predicti heredis tenuit de predicto Episcopo predecessore etc et obiit in homagio ipsius Episcopi etc. supponendo custodiam illam contigisse tempore predicti Episcopi predecessoris etc, que quidem custodia censi debet catallum ipsius Episcopi cuius tempore accidit: petit iudicium si iste Episcopus nunc ad hoc breue ad huiusmodi narrationem responderi debeat etc Et si hoc non sufficiat dicet aliud etc.

Postea predictus Maugerus dicit quod ad ipsum pertinet custodia predicti heredis et non ad predictum Episcopum etc. Dicit enim quod predictus Iohannes de Arundel pater predicti heredis tenuit manerium de Trelloy cum pertinenciis in eodem Comitatu de predicto Iohanne filio Laurencii patre predicti Maugeri cuius heres ipse est, per homagium fidelitatem et seruicium vnus feodi militis scilicet ad scutagium domini Regis quadraginta solidorum cum acciderit quadraginta solidos et ad plus plus, et ad minus minus, de quibus seruiciis idem Iohannes pater ipsius Maugeri fuit seisis per manus predicti Iohannis de Arundel patris predicti heredis etc et obiit in homagio suo etc.

**Note from the Record**—*continued*.

the appurtenances and the advowson of the church of the said manor and one messuage one carucate of land, one hundred shillings worth of rent with the appurtenances in the vill of St. Columb Major, and the advowson of the church of the same vill by homage, fealty, and the service of three knight's fees, to wit, for our Lord the King's scutage whenever it amounts to 40s. six pounds, and if more then more, and if less then less etc., and (whereas) the said Bishop, predecessor etc. was seised of those services by the hands of the said John, father etc., who died in the homage of the said Bishop, predecessor etc., and (whereas) by that reason the said wardship belongs to him, the present Bishop: the said Thomas unjustly deforces him from the said wardship etc., whereby he says that he has suffered loss and has damage to the amount of £300. And as to this he produces suit etc.

And Thomas comes by his attorney, and before now he vouched in this matter to warranty Mauger the son of John the son of Lawrence, who now comes upon summons etc. by the grand distress. Therefore he (is) in mercy for several defaults etc. And the said Mauger prays that it be shown him why he ought to warrant him etc.

And Thomas says that one John the son of Lawrence, father of the said Mauger, whose heir he is, granted and handed over to the said Thomas the Archdeacon the wardship of the said heir, to be held until the lawful age etc. And he bound himself and his heirs to warrant etc., by a writing of the said John the son of Lawrence which he proffers and which witnesses this etc. And he prays that he warrant him etc.

And Mauger fully acknowledges that the said writing is the deed of the said John the son of Lawrence, father etc. And as heir by blood he warrants him etc., protesting that he has nothing by descent from the said John the father etc. And he denies force and wrong when etc. And he says that whereas the said Bishop by his writ claims that the said wardship belongs to him for the reason that the said John father of the said heir held of the said Bishop predecessor etc. and died in the homage of the said Bishop etc., (thus) supposing the said custody to have happened in the time of the said Bishop predecessor etc., so that that wardship ought to be considered a chattel of that very Bishop in whose time it happened: he (therefore) demands judgment whether this present Bishop ought to be answered at this writ to such a count etc. And if that be not sufficient he will say something else etc.

Afterwards the said Mauger says that the wardship of the said heir belongs to him and not to the said Bishop etc. For he says that the said John of Arundel, father of the said heir, held the manor of Treloy with the appurtenances in the same county, of the said John the son of Lawrence<sup>1</sup> father of the said Mauger whose heir he is, by homage, fealty, and by the service of one knight's fee, to wit, for the scutage of our Lord the King if it be 40s. 40s., and if more then more, and if less then less, and of those services the said John, father of the said Mauger, was seised by the hands of the said John of Arundel, father of the said heir etc., and died in his homage etc., and

<sup>1</sup> John of Arundel held half a knight's fee in Treloy (in St. Columb Minor) of John the son of Lawrence in 1303 and 1306 (*Feudal Aids*, i, 198; 205).



**Note from the Record**—*continued*.

vnde dicit quod antecessores predicti heredis prius feoffati fuerunt de predicto manerio de Trelloy cum pertinenciis per antecessores predicti Maugeri et illud prius tenuerunt de antecessoribus ipsius Maugeri per seruicium militare : quam predicta tenementa in predicta villa de sancta Columba maiore et predictum manerium de La Herne cum pertinenciis de predecessoribus ipsius Episcopi per consimile seruicium militare Et de hoc ponit se super patriam.

Et Episcopus similiter.

Ideo preceptum est vicecomiti quod venire faciat hic a die sancti Hillarii in xv dies xii etc per quos etc Et qui nec etc Quia tam etc.

50. THE BISHOP OF NORWICH *v.* CAXSTONE.  
BARDULF *v.* CAXSTONE.<sup>1</sup>

I.<sup>2</sup>

<sup>3</sup>Casus custodie . . . qe ij qe partiez ij brezf pleider lum ou lautre sur priorite et sur ceo le auerrement etc.<sup>3</sup>

Vne<sup>4</sup> Robert de Caxstone<sup>5</sup> tient vne carue de terre de Th(o)m(as) Bardufe<sup>6</sup> et vn autre carue de terre del Eueqe de Norwiz<sup>7</sup> et la carue de terre tenue de Thom(as) Bardufe<sup>8</sup> fut de eigne feoffement <sup>9</sup>de la carue de terre qe Robert tient<sup>9</sup> del Euesqe il enfeoffa William<sup>10</sup> soun fiz pusne a tenir de chefe <sup>11</sup>seignur etc<sup>11</sup> et pus apres enfeoffa<sup>12</sup> mesme<sup>8</sup> cely William<sup>10</sup> de lautre carue de<sup>13</sup> tenir ut supra Robert deuie<sup>14</sup> William deuie Ih(o)n le fiz William<sup>10</sup> de<sup>8</sup> deinz age en la nuriture<sup>15</sup> Ihane. qe fuit la femme William<sup>10</sup> de Caxstone<sup>5</sup> vers la quele Thoma (B)ard.<sup>16</sup> porta soun bref de garde de cors lenfaunt. et le Euesqe de Norwyz vers mesme cely<sup>17</sup> autiel bref ; qe vient en court et dist qe ele<sup>18</sup> cle(i)me riens en la garde si noun par r(eson) de nuriture et prest est<sup>19</sup> arendre lenfaunt

<sup>1</sup> Reported by *C, E, P, R, T, X.*    <sup>2</sup> From *P.* Compared with *R.*    <sup>3-3</sup> Garde ou la priorete fut plede *R.*    <sup>4</sup> Vn *R.*    <sup>5</sup> Caxtone *R.*    <sup>6</sup> Bardol *R.*    <sup>7</sup> Norwyche *R.*    <sup>8</sup> Om. *R.*    <sup>9-9</sup> qe cele qe fut tenu *R.*    <sup>10</sup> W. *R.*    <sup>11-11</sup> seignurage del fee *R.*    <sup>12</sup> feffa *R.*    <sup>13</sup> Add: terre a *R.*    <sup>14</sup> de via *R.*    <sup>15</sup> etc. *R.*  
<sup>16</sup> Bardolfe *R.*    <sup>17</sup> cele *R.*    <sup>18</sup> Add: ne *R.*    <sup>19</sup> etc. *R.*

**Note from the Record—continued.**

as to this he says that the ancestors of the said heir were earlier enfeoffed of the said manor of Treloy with the appurtenances by the ancestors of him the said Mauger, and did hold it earlier by knight's fee of the ancestors of him the said Mauger, than they held the said tenements in the said vill of St. Columb Major and the said manor of Lanherne with the appurtenances of the predecessors of the said Bishop by a similar knight's service. And as to this he puts himself upon the country.

And the Bishop likewise.

Therefore the sheriff was commanded that he cause to come here on the quindene of St. Hilary twelve etc. by whom etc. and who are neither etc. because both etc.

50. THE BISHOP OF NORWICH *v.* CAXSTONE.  
BARDULF *v.* CAXSTONE.

I.

Writ of wardship (where two parties pleaded two writs one and the other as to priority of the feoffment, and as to this the averment was taken etc.).<sup>1</sup>

One Robert of Caxstone held one carucate of land of Thomas Bardulf<sup>2</sup> and another carucate of land of the Bishop of Norwich,<sup>3</sup> and the carucate of land held of Thomas Bardulf was held by a feoffment prior to that of the carucate of land which Robert held of the Bishop. Robert enfeoffed William, his younger son, to hold of the chief lord etc., and afterwards he enfeoffed the same William of the other carucate, to hold as above. Robert died, William died, John the son of William being within age in the nurture of Jane who had been the wife of William of Caxstone. And against her Thomas Bardulf brought his writ of wardship for the body of the infant, and the Bishop of Norwich also brought against her a similar writ. She came into court and said that she claimed nothing in the wardship except by reason of nurture, and she is ready to render the infant to whom the court would award.

<sup>1</sup> This translation represents merely a guess as to the meaning of the illegible text of the headline.

<sup>2</sup> Thomas Bardulf made a settlement of lands in Norfolk on himself and his wife Agnes in 1313 (*Cal. Pat.* 1313-17, p. 37), and exchanged his manor of Rungeton in that county for John Bardulf's manor of Halughton in Leicestershire in 1316 (*ibid.* p. 490). He was appointed to inquire into conspiracies in Norfolk in 1317 (*ibid.* 1317-1321, p. 97), and was a commissioner of

oyer and terminer in 1318 (*ibid.* p. 170): In 1320 he was keeper of the peace (*ibid.* p. 460), and in 1325 was appointed to keep the maritime parts of Norfolk and Suffolk from invasion (*ibid.* 1324-7, p. 162). In 1326 he was supervisor of array in the same counties, and empowered to arrest disturbers of the peace, but showed slackness in the performance of this duty (*ibid.* pp. 220, 228, 268, 285).

<sup>3</sup> John Salmon, Bishop of Norwich 1299-1325.



a qe la court ag(ardera). dist fut par la court al Euesqe<sup>1</sup> et a Th(o)m(as) quil m(u)strent quel de eux en vst meor droit en<sup>1</sup> la garde.

*Herle.* William<sup>2</sup> pere Ih(on)<sup>3</sup> tint del Euesqe vn carue de terre en Castone<sup>4</sup> par homage et fealte et par escuage etc. et murust en nostre homage et tient<sup>5</sup> mesme les terres de eigne feoffement del Eueqe qe de Th(o)m(as) Bard.<sup>6</sup> prest etc.

*Willeby.* William<sup>2</sup> pere Ih(on)<sup>3</sup> et Robert soun Aeel et touz ces auncestres tyndrent de Th(o)ma Bard<sup>6</sup> et de ces auncestres deigne feoffement qe del Euesqe prest etc.

*Herle.* Nous nauoms riens apleider a Robert qar William<sup>2</sup> pere Ioh(an)<sup>3</sup> fut purchacour de Robert et tint del Euesqe<sup>7</sup> auant qil tint de nul autre en<sup>8</sup> quel tens<sup>8</sup> sil vst deuie et Ioh(an)<sup>6</sup> deinz age nauereit leuesqe la garde? *q(uasi) d(iceret) sic.* et issint tint<sup>9</sup> le auncestre lenfaunt<sup>10</sup> de nous<sup>10</sup> deigne feoffement etc. qar purchacour nad pas auncestre qant a soun purchas. et<sup>10</sup> estre ceo<sup>11</sup> uous nestes<sup>11</sup> pas en cas ou seignurie<sup>12</sup> est<sup>13</sup> purchace *q(uasi) d(iceret)* il auera<sup>13</sup> lauauntage adire qil tint de soun feoffour deigne feoffement.

*Berr.* Qant Robert<sup>14</sup> en feoffa William<sup>15</sup> nenfeoffa il atener de<sup>16</sup> seignur del feo<sup>17</sup> *q(uasi) d(iceret)* la seignorie Th(o)m(as) par le feoffement soun tenant ne serroit empir(e). Estre ceo mesqe le tenant aliene soun ten(ance) il ne put mye oust(er) soun seignour de les app. . . emez.<sup>18</sup> qe apendeent a<sup>19</sup> seignurie.

*Scrop. ad idem.* Par my cele ley si p(urr)eit le tenant en cel cas en alienaunt le<sup>20</sup> demesne fere<sup>20</sup> quel seignur quil vodreit a qe garde ne apend(ereit)<sup>21</sup> pas de droit auer la garde qe serroit incon(ven)ient.

*Herle.* Nous sum(u)s si<sup>22</sup> apleider<sup>23</sup> vn bref de garde.

Et<sup>24</sup> ne veloit pas<sup>24</sup> *ad dictum* Berr.<sup>25</sup> resp(ondre) et weyua son primer resp(onse) et dist g(e)neralment qe les auncestres lenfaunt tyndrent deigne feoffement del Euesqe et del<sup>26</sup> <sup>27</sup>predec(essur).

Qe mesme resp(ondist) et dist<sup>27</sup> g(e)neralment saunz nomer Robert ou nul autre.

*Et nota*<sup>28</sup> qen cesti mise gist le<sup>28</sup> plee apres le verdist del enqeste etc.<sup>29</sup>

<sup>30</sup>Semble qe Herle nauoit mest(ier) de auer plede plu(i)s haut qe a lestat le pere lenfaunt vt .M. vii. f. 3.<sup>30</sup>

<sup>1-1</sup> qe T. mustre son droit de *R.*    <sup>2</sup> *W. R.*    <sup>3</sup> *J. R.*    <sup>4</sup> *caxtone R.*  
<sup>5</sup> *tynt R.*    <sup>6</sup> *Bardolfe R.*    <sup>7</sup> *Add: qe R.*    <sup>8-8</sup> qe les tenemenz *R.*  
<sup>9</sup> See note 2 p. 178.    <sup>10-10</sup> *Om. R.*    <sup>11-11</sup> nous ne sumes *R.*    <sup>12</sup> seignur *R.*    <sup>13-13</sup> purch(asour) qil naueroit *R.*    <sup>14</sup> *R. R.*    <sup>15</sup> *W. R.*    <sup>16</sup> *Add: chef R.*    <sup>17-17</sup> seignurs de fee *R.*    <sup>18</sup> *appruementz R.*    <sup>19</sup> *Add: sa R.*    <sup>20-20</sup> d(eman)die a *R.*  
<sup>21</sup> *napent R.*    <sup>22</sup> *issi R.*    <sup>23</sup> *pled(ant) R.*    <sup>24-24</sup> *noluit R.*    <sup>25</sup> *br(eue) R.*  
<sup>26</sup> de ces *R.*    <sup>27-27</sup> *predec(essours) qe de T. Bardolfe pret etc. et les autres R.*  
<sup>28-28</sup> qe cest *R.*    <sup>29</sup> *git tut le ploe etc. R.*    <sup>30-30</sup> This note is inserted in *P* later, i.e. after the next case had been written. The handwriting seems the same though later. In *R* it is omitted.

The Bishop and Thomas were told by the Court that they should show which one of them had a better right in the wardship.

*Herle.* William the father of John held of the Bishop one carucate of land in Caxton by homage and fealty and by escuage etc., and died in our homage and held those lands by a feoffment of the Bishop prior to that of Thomas Bardulf. Ready etc.

*Willoughby.* William the father of John, and Robert his grandfather, and all his ancestors, held of Thomas Bardulf and of his ancestors by a feoffment prior to that of the Bishop. Ready etc.

*Herle.* We have nothing to plead (as) to Robert, for William the father of John was purchaser from Robert and held of the Bishop before he held of anybody else, and if he had died at that time and John were within age, would not the Bishop have the wardship? (He implied that he would.) And thus the ancestor of the child held of us by prior feoffment etc., for a purchaser has no ancestor as to his purchase. And apart from that, you are not in a case in which the lordship is purchased (he implied that he would have the advantage of saying that he held of his feoffor by prior feoffment).

BEREFORD C.J. When Robert enfeoffed William, did he not enfeoff (him) to hold of the lord of the fee? (he implied that the lordship of Thomas would not be lessened by the feoffment of his tenant). Moreover, even if the tenant alienate his tenancy, he cannot oust his lord of the (appurtenances?) which belong to the seignory.

*Scrope* (to the same purpose). Under a law like that the tenant could in this case, by alienating the demesne, make whatever lord he wished, even one to whom the wardship would not belong as of right, have the wardship. And that would be absurd.

*Herle.* We are here to plead a writ of wardship.

And he would not answer to the *dictum* of BEREFORD C.J., and waived his first answer, and said in a general way that the ancestors of the infant held by prior feoffment of the Bishop and of the predecessor.

(The other party) answered in the same way and said in a general way, without naming Robert or any other.

And note that <sup>1</sup>in this mise the<sup>1</sup> plea lies after the verdict of the inquisition etc.

It seems that *Herle* had no need to plead higher than as to the estate of the father of the infant, as (appears) in Michaelmas of the seventh year on folio 3.

<sup>1-1</sup> According to *R*, this statement lies (all the plea) after the verdict of should run: (And note) that this plea the inquisition.



II.<sup>1</sup>

De Custodia vbi plures pecierunt causa prioritatis.

Le Euesque de Northwyk<sup>2</sup> porta soun bref de garde uers vne Maude etc. et demanda la garde du corps vn<sup>3</sup> enfaunt<sup>3</sup> etc. M vient et dit qe Robert de<sup>3</sup> Bardulf<sup>4</sup> porta bref de garde <sup>5</sup>deuers luy et demanda mesme lenfaunt vn<sup>5</sup> Thom(as) de<sup>3</sup> Cateno(u)s<sup>6</sup> vn autre bref<sup>3</sup> de<sup>3</sup> garde<sup>3</sup> de mesme lenfaunt uers<sup>3</sup> mesme<sup>3</sup> celle<sup>3</sup> etc.<sup>3</sup> et ele fut prest de rendre lenfaunt<sup>3</sup> a qi 7la Court voudra agarder<sup>7</sup> <sup>8</sup>Robert Thom(as)<sup>8</sup> furent demande qi vindrent ala barre etc.

*Berr.*<sup>9</sup> Vous<sup>10</sup> iij demandez<sup>11</sup> la garde <sup>12</sup>du corps et de vn<sup>12</sup> enfaunt ore moustrez qi de<sup>3</sup> vous<sup>3</sup> ad meillour<sup>13</sup> droit dauer la garde.

*Will.*<sup>14</sup> <sup>15</sup>Le pere<sup>15</sup> lenfaunt tint del euesque etc. vn carue de terre auant<sup>16</sup> ceo <sup>17</sup>qe vnqes etc. de Robert ou de Thom(as)<sup>17</sup> prest etc.

*Herle.* Qi<sup>3</sup> William<sup>18</sup> pere Lenfaunt <sup>19</sup>et Richard pere William et ael lenfaunt et<sup>19</sup> sez auncestres tindrent de Robert Bard.<sup>4</sup> et ses auncestres <sup>20</sup>certeinz tenemenz<sup>20</sup> par priorite de feffement auant ceo qe vnqe tindrent de Leuesque ou de Thom(as) etc. prest etc.

*Toud.*<sup>21</sup> Vous dites qe Richard pere<sup>22</sup> William et<sup>3</sup> ael lenfaunt etc<sup>3</sup> et<sup>3</sup> deit<sup>3</sup> qi heir il est enfeffa<sup>23</sup> lenfaunt heir al ael qe autrement<sup>24</sup> lael nest my auncestre a lenfaunt qant<sup>25</sup> a<sup>3</sup> successioun etc.

*Berr.* Il pout<sup>26</sup> estre qe Richard<sup>3</sup> ael etc. tint certains tenemenz de Robert Bardolf<sup>4</sup> par priorite de feffement et autre tenement del Euesque par posterite<sup>27</sup> etc. pus Richard<sup>3</sup> en feffa William<sup>3</sup> pere lenfaunt qe fut son fitz priue<sup>28</sup> des tenemenz qil tint del Euesque. atener de Chief seignurage<sup>29</sup> de fee apres ceo enfeffa mesme celuy William<sup>3</sup> des tenemenz qil tient de Robert B<sup>4</sup> etc. a tenir de<sup>3</sup> chief<sup>3</sup> seignurage<sup>3</sup> etc. entendez<sup>30</sup> qe cele feffement qe le tenant ad fet change la nature<sup>31</sup> de priorite <sup>32</sup>ou tolt<sup>32</sup> al chief<sup>3</sup> seignur sa garde du corps qest annex a sa seignurie par<sup>3</sup> reson<sup>3</sup> de<sup>3</sup> priorite<sup>3</sup> *q(uasi) d(iceret) non. Et sic*<sup>33</sup> *fuit casus* ici.<sup>3</sup>

<sup>1</sup> From *T.* Compared with *C.* Headnote from *C.* <sup>2</sup> Northwich *C.*  
<sup>3</sup> *Om. C.* <sup>4</sup> Bardolf *C.* <sup>5-5</sup> vers mesme cely et *C.* <sup>6</sup> Canoyes *C.* <sup>7-7</sup> la  
garde etc. *C.* <sup>8-8</sup> R. et T. *C.* <sup>9</sup> Denom. *C.* <sup>10</sup> *Add:* estez *C.* <sup>11</sup> deman-  
danz *C.* <sup>12-12</sup> de cest *C.* <sup>13</sup> mendre *C.* <sup>14</sup> *Herle. villm. C.* <sup>15-15</sup> *pere*  
is cancelled and *Ael* written above the line *C.* <sup>16</sup> *eynz C.* <sup>17-17</sup> qil teynt de  
R. ou de T. *C.* <sup>18</sup> *Add:* Ael etc et Richard *C.* <sup>19-19</sup> et touz *C.* <sup>20-20</sup> vne  
carue terre *C.* <sup>21</sup> *Herle C.* <sup>22</sup> *Add:* etc. et *C.* <sup>23</sup> en fesant *C.* <sup>24</sup> par  
aaventure *C.* <sup>25</sup> par *C.* <sup>26</sup> put *C.* <sup>27</sup> priorite *C.* <sup>28</sup> pusnee *C.*  
<sup>29</sup> seignur *C.* <sup>30</sup> *Add:* vous *C.* <sup>31</sup> *Add:* de la tenance *C.* <sup>32-32</sup> et tout *C.*  
<sup>23</sup> talis *C.*

## II.

Writ of wardship where several demanded by reason of priority.

The Bishop of Norwich brought his writ of wardship against one Maud etc. and demanded the wardship of the body of an infant etc. Maud came and said that Robert of Bardulf brought a writ of wardship against her and demanded the same infant, (and) one Thomas of Catenous (brought) another writ of wardship for the same infant against her too etc., and she was ready to render the infant to whom the Court would award. Robert (and) Thomas were demanded and they came to the bar etc.

BEREFORD C.J. You three demand the wardship of the body of<sup>1</sup> an infant. Now show which one of you has the better right to have the wardship.

*Willoughby.* The father of the infant held of the Bishop etc. one carucate of land before (he) ever (held) etc. of Robert or of Thomas. Ready etc.

*Herle.* Ready etc. that William father of the infant and Richard father of William and grandfather of the infant and his ancestors held certain tenements of Robert Bardulf and his ancestors by prior feoffment, before they ever held of the Bishop or of Thomas etc.

*Toudeby.* You say that Richard father of William and grandfather of the infant etc., and say : ' whose heir he is enfeoffed the infant, heir to the grandfather,' for otherwise the grandfather is not an ancestor of the infant as to the succession etc.<sup>2</sup>

BEREFORD C.J. It may be that Richard the grandfather etc. held certain tenements of Robert Bardulf by priority of feoffment and other tenements of the Bishop by posterity etc., (and that) afterwards Richard enfeoffed William, the father of the infant, who was his younger<sup>3</sup> son, of the tenements which he held of the Bishop, to hold of the chief lord of the fee, (and that) afterwards he enfeoffed the same William of the tenements which he held of Robert Bardulf etc., to hold of the chief lord etc. Do you think that such a feoffment which the tenant has made changes the nature of priority or takes away from the chief lord his wardship of the body, which is attached to his seignory by reason of priority ? (he implied that it does not). And such was the case here.

<sup>1</sup> The text has 'and,' but according to *C* it should be 'of this.'      seisin of the grandfather as his own.

<sup>3</sup> Supplied from *C*.

<sup>2</sup> *I.e.* the infant cannot count the



Herle<sup>1</sup> *dixit*<sup>1</sup> Nous tendoms dauerrer qe launcestre lenfaunt etc del Euesqe etc par priorite etc et ceo veot lestatut *de quo antecessor* etc. et sil voleit<sup>2</sup> dire qe Richard<sup>3</sup> le Ael fust launcestre lenfaunt et<sup>4</sup> fust soun h(e)ir(e) nous pled(r)oms ofue eux. et sil voillent conustre qe Richard<sup>3</sup> tient etc. et enf(effa) William<sup>1</sup> piere lenfaunt en la manere auant dite etc.<sup>5</sup>

Berr.<sup>6</sup> Durr(esce) serroyt qe le fait le tenant chang(er)eit la priorite etc. issi ostereit la priorite chescun tenant du mound son seignur de mariage<sup>7</sup> etc.

Herle. Conusetz<sup>8</sup> donques<sup>1</sup> qe William piere lenfaunt fut purchac-zour et qe soun primer purch(ace) fust a tenir del Euesqe et nous serroms tost a vn.

Will. *noluit hoc cognoscere* mais dist qe <sup>9</sup>les ancestres lenfaunt tindrent<sup>9</sup> de <sup>10</sup>Robert Bard. qi<sup>10</sup> vnqes etc. del Euesqe ou de Thom(as)<sup>11</sup> etc.

Et al(ius)<sup>12</sup> qe les auncestres<sup>13</sup> auant ceo qe rien tindrent de Robert<sup>14</sup> ou de Thom(as)<sup>11</sup> etc.

Loueday. Qe les auncestres lenfaunt etc. <sup>15</sup>de T. *in forma pre-dicta* etc.<sup>15</sup>

### III.<sup>16</sup>

Garde.

Le Euesqe de Norwiche porta vn bref de garde vers Ione qe fu la femme Robert Gastone et demanda la garde del corps Iohan fitz et heir W. Gastone.

Migg. def(endist) et dist. Vous auetz si la dame qe vous dist qe Thom(as) Bardolf porta vn bref vers luy et demanda mesme la garde et Raufe Camus par bref ceynz demande mesme la garde et ele nad rien ne rien ne cleyme en la gard fors auxi come mere lenfaunt et prest est a deliuerer le a qy qe la Court agard.

T. Bardolf fu demande et vint et Raufe Camus fu demande et vint.

Herle pur leuesqe. Nous vous dioms qe W. Gastone pere lenfant tint de nous par seruice de ch(eualie)r auant ceo qil tint de T. Bardulfe ou de Raufe par priorite de feoff(ement) prest etc. iugement etc.

Wilby. pur T. Bardulf. W de Gastone pere lenfaunt et Robert

<sup>1</sup> Om. C.      <sup>2</sup> veilent C.      <sup>3</sup> Richard is cancelled and W written above the line C.      <sup>4</sup> Add: qe lenfant C.      <sup>5</sup> Add: nous serroms tost a vn C.      <sup>6</sup> Add: grant C.      <sup>7</sup> garde C.      <sup>8</sup> conisse il C.      <sup>9-9</sup> lancestre lenfant teynt C.      <sup>10-10</sup> R. auant qe C.      <sup>11</sup> T. C.      <sup>12</sup> alii C.      <sup>13</sup> Add: etc. del Euesqe C.      <sup>14</sup> R. C.      <sup>15-15</sup> auant ceo qe vnqes tyndrent del Euesqe ou de Robert prest etc. et alii eontra.      <sup>16</sup> From E.

*Herle* said : We offer the averment that the ancestor of the infant (held) etc. of the Bishop etc. by priority etc. and that is prescribed (for) in the statute *de quo antecessor*<sup>1</sup> etc. and if he wished to say that Richard the grandfather was the ancestor of the infant and that<sup>2</sup> the<sup>2</sup> infant<sup>2</sup> was his heir we shall plead with them, and if he wish to make conusance that Richard held etc. and enfeoffed William the father of the infant in the aforesaid manner etc., we<sup>2</sup> shall<sup>2</sup> be<sup>2</sup> all at<sup>2</sup> one<sup>2</sup> etc.

BEREFORD C.J. It would be a hardship if the deed of the tenant were to change the priority etc. Thus every tenant in the world would change the priority of his lord as to marriage<sup>2</sup> etc.

*Herle*. Then make conusance that William father of the infant was purchaser and that his first purchase was to hold of the Bishop, and we shall be all at one.

*Willoughby* would not admit that, but said that the ancestors of the infant held of Robert Bardulf before<sup>2</sup> they ever (held) etc. of the Bishop or of Thomas etc.

And (the other party) that the ancestors (held) etc.<sup>2</sup> of<sup>2</sup> the<sup>2</sup> Bishop<sup>2</sup> before they held anything of Robert or of Thomas etc.

*Loveday*. That the ancestors of the infant etc. (held) of Thomas in the said form etc.

### III.

#### Wardship.

The Bishop of Norwich brought a writ of wardship against Joan, wife that was of Robert Gastone, and demanded the wardship of the body of John the son and heir of W. Gastone.

*Miggeley* defended and said : You have here the lady who tells you that Thomas Bardulf brought a writ against her and demanded the same wardship, and Ralph Camus by a writ here (in this Court) demands the same wardship, and she has nothing and claims nothing in the wardship except as mother of the infant and she is ready to deliver him to whomsoever the Court (will) award.

Thomas Bardulf was called and came and Ralph Camus was called and came.

*Herle* (for the Bishop). We tell you that W. Gastone father of the infant held of us by knight's service by priority of feoffment, before he held of Thomas Bardulf or of Ralph. Ready etc. Judgment etc.

*Willoughby* (for Thomas Bardulf). W. of Gastone father of the

<sup>1</sup> Stat. Westm. II, cap. 16.

<sup>2</sup> Supplied from *C*.



de Gastone son Ael et cez auncestrs tindrent de nous et de nos aunces-  
tres par priorite de feff(ement) auaunt ceo qil tindrent del Euesqe.  
prest etc.

*Herle.* Nous auoms dit qe W. gastone pere lenfaunt tint de nous  
par seruice de ch(eualie)r auaunt ceo qil tint de vous et cel sum(us)  
prest dauerrer et a cel qe vous dites qe Raufe Gastone ael lenfaunt  
tint de vous par priorite a cel nauoms mye mester a r(espondre). qe mesme  
cesti R. Gastone tynt de nous le maner de P. et dona cel maner a W.  
gastone son pusne fuitz a tenir de nous et de nos successurs issi qil est  
purch(asur) de cel maner et tynt de nous auaunt ceo qe rien auoit  
purch(ac)e des tenemenz qil tent de vous en quel temps de droit la  
garde del corps demurra en nostre persone de quel droit nous ne  
deuoms pas estre oste par pusne purch(ac)e del ten(aunt) et demandoms  
iugement si a altre tenaunce qe a la tenaunce le purch(asur) deuoms  
r(espondre).

*Denum.* Qant R (. . . )stone tint de nous certeynz tenemenz par  
seruice de ch(eualie)r et de vous altres tenemenz le droit de priorite  
nous demora et coment qil enfeoffa altre des tenemenz qe furent tenuz  
de vous cel feoff(ement) ne nous oste pas de la seignorie qe nous est  
ac(r)u et demandoms iugement.

*Herle.* Si le seignor grante vne seignorye a vn home parmy quel  
grant le tenaunt se attourne et la seignorye des altres tenemenz qe  
mesme le tenaunt tent de luy a vn altre hom cel grant de seignorye ne  
chaunge mye la priorite mes tot(e) altre est la ou le tenant enfeoffe vn  
hom des tenemenz qe sont tenuz de vn seynour meynテナunt parmy  
cel feoff(ement) si acrest droit al seignour dauoir la garde del corps si  
cas aueigne et statut voet qe celui eit la garde del corps de qy launcestre  
lenfaunt tint par priorite de feoff(ement) et nous voloms auerrer<sup>1</sup> qe le  
auncestre lenfaunt cest assauoir son pere tint de nous auaunt ceo qil  
tint de eux et a pleder al estat R Gastone de qy nostre ten(aunt)  
purch(acea) les tenemenz et qe nest pas son auncestre qe il ad altre  
h(eir) del saunk ieo nenten(k) pas qe statut nous chace et demandoms  
iugement.

*Ber.* Ieo crey qe le feoff(ement) ne lalienacion le tenaunt del  
dem(esne) ne purra en nule manere oster le seignur de sa seignorye ne  
chaunger son estat.

*Herle.* Le pere lenfaunt et cez auncestrs tindrent de nous et nos  
predecessurs auaunt ceo qil tindrent de eux prest etc.

*Et alii contra.*

<sup>1</sup> et nous cancelled E.

infant, and Robert of Gastone his grandfather, and his ancestors, held of us and of our ancestors by priority of feoffment before they held of the Bishop. Ready etc.

*Herle.* We have said that W. Gastone, father of the infant, held of us by knight's service before he held of you, and this we are ready to aver. And as to that which you say, that Ralph Gastone, grandfather of the infant, held of you by priority, to that we need not answer, for that same Ralph Gastone held of us the manor of P. and gave that manor to W. Gastone his younger son, to hold of us and of our successors, so that he is a purchaser of that manor, and held of us before he had purchased anything of the tenements which he holds of you. And at that time the wardship of the body remained of right in our person, and of that right we ought not to be ousted by a later purchase (on the part) of the tenant. And we demand judgment whether we ought to answer to (any) other tenancy than the tenancy of the purchaser.

*Denom.* When Ralph Gastone held of us certain tenements by knight's service and of you other tenements, the right of priority remained with us, and albeit that he enfeoffed another of the tenements which were held of you, that enfeoffment does not oust us of the lordship which has accrued to us. And we demand judgment.

*Herle.* If the lord grants one lordship to one man, and upon that grant the tenant attorns himself, and (then grants) the lordship of other tenements which the same tenant holds of him to another man, this (second) grant of a lordship does not change the priority. But it is quite different where the tenant enfeoffs a man of tenements which are held of one lord, (because) by that feoffment there accrues immediately to the lord the right of having the wardship of the body if a case of wardship should happen. And the statute<sup>1</sup> says that he of whom the ancestor of the infant held by priority of feoffment shall have the wardship of the body, and we are willing to aver that the ancestor of the infant, that is to say his father, held of us before he held of them. And I do not think that the statute drives us to plead to the estate of Ralph Gastone from whom our tenant purchased the tenements and who is not his ancestor, for he has another heir of his blood, and we demand judgment.<sup>2</sup>

BEREFORD C.J. I believe that neither the feoffment nor the alienation by the tenant of the demesne could in any way oust the lord from his lordship or change his estate.

*Herle.* The father of the infant and his ancestors held of us and of our predecessors before they held of them. Ready etc.

Issue joined.

<sup>1</sup> Stat. Westm. II, cap. 16.

<sup>2</sup> Namely, the elder brother of the infant's father, or the issue of that brother.



IV.<sup>1</sup>

## Garde.

Thomas fitz Hughe Bardolf et Ion Euesque de Norwich porterent diuerses brefs de la garde dun corps vers vne femme qe ne clama fors la nurture prest a respondre etc. Et les pleintifs la en propre persone furent chacez a entrepleder.

*Malm.* pur leuesqe. Launcestre lenfaunt tyndr<sup>2</sup> primes del Euesque, et de ses predecessurs qe de Thomas ou de ses auncestres prest.

*Wilb.* R. pierre lenfant et William Ael lenfaunt et les auncestres William tindrent de nous et de noz auncestres par eyne feffement prest etc.

*Malm.* R. pierre lenfaunt feust purchasur et fitz peune a William issint qe William ad autre h(e)ir(e) et lau(e)r(rement) est limite par statut sur la tenance lenfaunt et de ses auncestres.

*Toud.* Mon tenaunt ne peut pas aliener mon droit.

*Berford.* Malm. tend lauerrement aussi largement com statut donne. r(espondez) a ceo.

*Wilb.* Qe les auncestres lenfaunt tindrent de nous et de noz auncestres primes qe del Euesque etc. |

*Al(ii) econtra.*

51. MUSGRAUE v. EGGLEFFELDE.<sup>3</sup>I.<sup>4</sup>

Garde ou p(ier)t qe charte fet atermer pur surete de soun terme ne tout pas garde etc.

William de langetone porta bref de garde vers Ihone de Nortone et demaunde la garde. de la tere et del heir Thomas Sampson par la

<sup>1</sup> From X.

<sup>2</sup> Partly scratched out—doubtful.

<sup>3</sup> Reported by P, X.

<sup>4</sup> From P.

## IV.

## Wardship.

Thomas the son of Hugh Bardolf and John Bishop of Norwich brought separate writs for the wardship of a body against a woman who claimed nothing except the nurture (and was) ready to render<sup>1</sup> etc. And the plaintiffs in their own persons were driven to interplead.

*Malberthorpe* (for the Bishop). The ancestor of the infant held of the Bishop and of his predecessors before (he held) of Thomas or of his predecessors. Ready.

*Willoughby*. R. father of the infant, and William grandfather of the infant, and the ancestors of William held of us and of our ancestors by prior feoffment. Ready etc.

*Malberthorpe*. R. father of the infant was purchaser and younger son of William, so that William has another heir, and the averment is limited by statute to (the question of) the tenancy of the infant and of his ancestors.

*Toudeby*. My tenant cannot alienate my right.

BEREFORD C.J. *Malberthorpe* tenders the averment as broadly as the statute gives it. Answer to that.

*Willoughby*. Ready etc. that the ancestors of the infant held of us and of our ancestors before (they held) of the Bishop etc.

Issue joined.

51. MUSGRAUE *v.* EGGLEFFELDE.

## I.

(Writ of) wardship where it appears that a charter made for a termor for the security of his term does not take away the wardship etc.

Thomas of Musgraue<sup>2</sup> brought a writ of wardship against Adam of Eggleffelde<sup>3</sup> and demanded the wardship of the land and of the heir

<sup>1</sup> It is very likely that the text should read *rendre*, and not *respondre*.

<sup>2</sup> Thomas of Musgrave made a settlement of land in Bletchingdon, Oxon., on himself and his wife Joan and his heirs in 1320 (*Cal. Pat.* 1317-21, p. 524). In 1324 he was coroner for Oxfordshire, but it was said that he had no lands in the county to qualify him for the office, and another was elected in his place (*Cal. Close* 1323-7, p. 101).

<sup>3</sup> In 1310 Adam de Eggesfelde was ordered to be ready by the day after

Michaelmas to go to Gascony on the King's service (*Cal. Close* 1307-13, p. 331; *Cal. Pat.* 1307-13, p. 283). In 1313 he was presented to the church of Newcastle on Are in the diocese of Glasgow (*Cal. Pat.* 1313-17, p. 20). He was appointed, in 1313, attorney for the Queen Dowager Margaret for three years, and next year was a commissioner of oyer and terminer in Hertfordshire (*ibid.* pp. 259, 586). In 1317 he was collated by Queen Margaret to the wardenship of St. Katherine's Hospital by the Tower (*ibid.* 1317-21, p. 64).



resoun quil tient de lui par seruice de cheualier et murust en soun homage.

*Scrop.* Nous ne clamoms rien en la garde du cors. et qant ala tere Thomas pere lenfaunt nous enfeoffa de mesme latere a nous et a nos heirs et issi sumes nous enz iugement si cesti bref vers nous igise.

*Denoun.* Uous ne dites pas quil ne murust en nostre homage de ceo prioms nous recorde. et vous dioms qe Thomas pere lenfaunt lessa meme la tere a terme de iii anz rendaunt par an x *li*. E ci uous tenucez la tere outre la terme. qe uous rendrez la double value de la terme par an et la charte dount il parlent fut fete en seuraunce. del dist terme. et issint sumes nous en cas. destatut. iugement.

*Scrop* le granta pur doute qe soun clam(ance) ly vst turne en preiudice aperdre. soun terme qant le heir vendra a soun age.

Iudicium.

Par qei il recoueri la garde.

## II.<sup>1</sup>

William de Langetone porta bref de garde vers Ion de Nortone dela terre et del heir T. Samps' qi tint deli etc.

*Scrop.* Nous ne clamoms ren en la garde de corps. qant ala terre Th. pere lenfaunt nous enfeffa iugement si ceo bref vers nous gise.

*Den.* T. vous lessa a terme de iij auntz rendaunt x *li* par an E rendaunt apres la double value. et la charte de qei vous parlez fu fet en assurance du terme issint sumes en cas de statut.

*Scrop* nosa nient(er) son cleim pur doute de perdre son terme et con(ust) ceo qe *Den.* dist.

*Ideo* le demaundant recoueri.

### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 95 verso. Cumberland.  
Written by Luding'.

Adam de Eggleffelde clericus summonitus fuit ad respondendum Thome de Musgraue et Iohanne vxori eius de placito quod reddat eis custodiam terre et heredis Ade de Pardishou que ad ipsos Thomam et Iohannam pertinet eo quod predictus Adam de Pardishou terram suam de eo (*sic*) tenuit per

<sup>1</sup> From X.

of Adam of Pardishou for the reason that he (had) held of him by knight's service and died in his homage.

*Scrope.* We claim nothing in the wardship of the body, and as to the land Adam the father of the infant enfeofed us of the same land, to us and to our heirs, and thus we are 'in.' Judgment whether this writ lies against us.

*Denom.* You do not say that he did not die in our homage. Of this we pray the record.<sup>1</sup> And we tell you that Adam the father of the infant leased the said land for a term of three years, yielding £10 a year, and if you were to hold the land beyond the term, you should render the double value of the term every year, and the charter of which they speak was made in assurance of the said term, and thus we are in the case of the statute.<sup>2</sup> Judgment.

*Scrope* granted that, for fear lest his claim should turn to his prejudice, (so that he might) lose his term, when the heir will have come of age.

Therefore he recovered the wardship.

Judgment.

## II.

Thomas of Musgraue brought a writ of wardship against Adam of Eggleffelde for the land and the heir of Adam of Pardishou who held of him etc.

*Scrope.* We claim nothing in the wardship of the body. As to the land, Adam the father of the infant enfeofed us. Judgment whether this writ lies against us.

*Denom.* Adam leased to you for a term of three years, rendering £10 a year, and rendering afterwards the double value. And the charter of which you speak was made in assurance of the term. Thus we are in the case of the statute.

*Scrope* did not dare to deny his claim for fear of losing his term and confessed that which *Denom* had said.

Therefore the demandant recovered.

### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 95 verso. Cumberland.  
Written by Luding'.

Adam of Eggleffelde, clerk, was summoned to answer Thomas of Musgraue and Joan his wife in a plea that he restore to them the wardship of the land and the heir of Adam of Pardishou, which belongs to the said Thomas and Joan for this reason, that the said Adam of Pardishou held his land from

<sup>1</sup> *I.e.* we pray that this be recorded.

<sup>2</sup> See Westm. II. cap. 24. Cf. S.S., *Y.B.S.* ii. 161.



**Note from the Record—continued.**

seruicium militare etc. Et vnde iidem Thomas et Iohanna dicunt quod cum predictus Adam de Pardishou pater etc tenuisset de predictis Thoma et Iohanna vt de Iure ipsius Iohanne tria mesuagia triginta et octo acras terre cum pertinenciis in Dene per homagium fidelitatem et seruicium viginti denariorum ad cornagium, quod quidem cornagium secundum vsum et consuetudinem Comitatus Cumbr' dat custodiam etc., de quibus seruiciis iidem Thomas et Iohanna fuerunt seisis per manus predicti Ade de Pardishou patris predicti heredis cuius heres ipse est etc tempore pacis tempore domini Regis nunc et obiit in homagio suo etc. Et ea ratione predicta custodia ad ipsos Thomam et Iohannam pertinet, predictus Adam de Eggleffelde custodiam illam eis iniuste deforciat vnde dicunt quod deterioratus est (*sic*) et dampnum habet ad valenciam centum librarum Et inde producit sectam etc.

Et Adam venit Et defendit vim et Iniuriam qu(as) etc. Et quo ad custodiam predicti heredis dicit quod ipse nichil clamat etc nec custodiam eiusdem heredis ei (*sic*) deforciat sicut predicti Thomas et Iohanna dicunt Et de hoc ponit se super patriam.

Et Thomas et Iohanna similiter.

Ideo preceptum est vicecomiti quod venire faciat hic a die sancti Hillarii in xv dies xii etc. per quos etc. Et qui nec etc. Quia tam etc.

Et quo ad custodiam predictorum tenementorum etc predictus Adam de Eggleffelde non dedit quin predictus Adam de Pardishou pater predicti heredis tenuit de predictis Thoma et Iohanna per seruicium militare in forma predicta, set dicit quod predictus Adam de Pardishou pater etc in vita sua feoffauit ipsum Adam de Eggleffeld de predictis tenementis cum pertinenciis Tenendis sibi et heredibus suis etc et hoc paratus est verificare etc. Et petit iudicium etc.

Et Thomas et Iohanna dicunt reuera quod predictus Adam de Pardishou dimisit predicto Ade de Eggleffelde tenementa predicta, Tenenda ad terminum tresdecim annorum tantum, Ita quod post finem predicti termini, predictus Adam de Eggleffelde et heredes sui si tenementa illa vlterius tenuissent: redderent predicto Ade de Pardishou et heredibus suis per annum. in multo vltra verum valorem eorundem tenementorum, et pro securitate termini etc fecit ei quandam cartam feoffamenti etc Et hoc paratus est verificare etc. et petit iudicium si per huiusmodi ficta feoffamenta debeat de predicta custodia defraudari etc.

Et Adam de Eggleffeld non potest hoc dedicere.

Ideo consideratum est quod predicti Thomas et Iohanna recuperent custodiam predictorum tenementorum etc et dampna sua etc Et Adam de Eggleffeld in misericordia etc.

Et predicti Thomas et Iohanna gratis remittunt dampna etc set saluo eidem Ade de Eggleffeld suo recuperare quo ad predictum terminum etc uersus heredes predicti Ade Pardishou cum ad etatem peruenerint etc.

**Note from the Record**—*continued.*

them by knight's service etc. And concerning this the said Thomas and Joan say that whereas the said Adam of Pardishou father etc. held of the said Thomas and Joan, as of the right of the said Joan, three messuages thirty-eight acres of land with the appurtenances in Dean, by homage fealty and by the service of 20*d.* for the cornage,<sup>1</sup> and (whereas) that cornage according to the use and custom of the county of Cumberland gives the wardship etc., and (whereas) the said Thomas and Joan were seised of those services by the hands of the said Adam of Pardishou father of the said heir whose heir he is etc., in time of peace in the time of our Lord the present King and (he) died in their homage etc., and (whereas) for that reason the said wardship belongs to the said Thomas and Joan,—yet the said Adam of Eggleffelde unjustly deforces the said wardship from them, whereby they say that they have suffered loss and have damage to the amount of £100. And as to this they produce suit etc.

And Adam comes, and denies force and wrong when etc. And as to the wardship of the said heir he says that he claims nothing etc. and he does not deforce from them the wardship of the said heir, as the said Thomas and Joan say. And as to this he puts himself upon the country.

And Thomas and Joan likewise.

Therefore the sheriff was commanded that he cause to come here on the quindene of St. Hilary twelve etc. by whom etc. And who are neither etc. Because both etc.

And as to the wardship of the said tenements etc. the said Adam of Eggleffelde does not deny that the said Adam of Pardishou father of the said heir held of the said Thomas and Joan by knight's service in the said form, but he says that the said Adam of Pardishou father etc. in his lifetime enfeoffed him the said Adam of Eggleffelde of the said tenements with the appurtenances, to hold to himself and to his heirs etc. And this he is ready to aver etc. And he demands judgment etc.

And Thomas and Joan say indeed that the said Adam of Pardishou leased to the said Adam of Eggleffelde the said tenements, to hold for a term of thirteen years only, so that after the end of the said term, the said Adam of Eggleffelde and his heirs should, if they were to hold those tenements longer, render to the said Adam of Pardishou and his heirs every year much more than the true value of those tenements, and for the security of the term etc. he made him a charter of feoffment etc. And this they are ready to aver etc. and they demand judgment whether they ought to be defrauded of the said wardship by fictitious feoffments of this kind etc.

And Adam of Eggleffelde cannot deny this.

Therefore it was considered that the said Thomas and Joan recover the wardship of the said tenements etc. and their damages etc. And Adam of Eggleffelde in mercy etc.

And the said Thomas and Joan do of their own will remit the damages etc. But let there be saved to the said Adam of Eggleffelde his recovery as to the said term etc. against the heirs of the said Adam of Pardishou when they shall have come of age etc.

<sup>1</sup> For this service see Neilson's 'Customary Services' in *Oxford Social and Legal Studies* (ed. Vinogradoff), vol. ii. p. 120.



52. THE PRIOR OF BROMHOLM *v.* GILBERD AND WOLSY.<sup>1</sup>I.<sup>2</sup><sup>3</sup>Rauissement de garde.<sup>3</sup>

Vn bref de rauissement de garde fut porte vers plusurs et la play fut discontinu<sup>4</sup> vers les vns.

Et la discontinuance fu chalenge par *Denum.* et demanda iugement sil deuera<sup>5</sup> respondre.

Et *hoc*<sup>6</sup> *non obstante* la discontinuance etc uers les <sup>7</sup>vns etc.<sup>7</sup> fut agarde par *Ber.* qil deit outre.<sup>8</sup>

*Denum.* <sup>9</sup>Par la ou il ount conte et sup(posit) par le bref et par lour conte qe nous et les autres vers les queux le play est discontinu deuem(e)s auer raui etc.<sup>9</sup> nous ly rauimes pas prest etc.

*Et alii econtra etc.*

II.<sup>10</sup>

Rauissement de garde ou *non obstante* qe le ple fut discontinue vers ii. les autres furent chacez a respondre.

En vn bref de Rauissement de garde porte vers plusours et<sup>11</sup> le ple feut discontinue vers ij. les autres vindrent en Cour et demanderent iugement sil deiuent r(espondre) de puis qe le ple feut discontinue vers ij. *hoc non obstante* il feut chace a r(espondre).

III.<sup>12</sup>

## Rauissement de Garde.

En bref de Rauissement de Garde vers plusours discontinuance fust alegge vers ii tamen les autres furent chacez a respounce.

<sup>1</sup> Reported by *B, F, M, P, R, X.* This is Vulg. 16.      <sup>2</sup> From *R.* Compared with *P.*      <sup>3-3</sup> Nota ou le plai fut discontinue vers lez vns etc. *P.*      <sup>4</sup> descontinue *P.*      <sup>5</sup> deuereit *P.*      <sup>6</sup> *Om. P.*      <sup>7-7</sup> autres *P.*      <sup>8</sup> Suppl.(?): respondre. <sup>9-9</sup> *Om. P.*      <sup>10</sup> From *M.* Compared with *B, F.* Headnote from *F.*      <sup>11</sup> etc. *F.*      <sup>12</sup> From *X.*

52. THE PRIOR OF BROMHOLM *v.* GILBERD AND WOLSY.

## I.

## Ravishment of ward.

A writ of ravishment of ward was brought against several and the plea was discontinued against some (of them).

And the discontinuance was challenged<sup>1</sup> by *Denom* and he demanded judgment whether he ought to answer.

And notwithstanding the discontinuance etc. against some (of them) etc. it was awarded by BEREฟอร์ด C.J. that he say something else etc.

*Denom.* Whereas they have counted, and they suppose by their writ and by their count, that we and the others against whom the plea is discontinued have ravished etc., we have not ravished him. Ready etc.

Issue joined etc.

## II.

Ravishment of ward, where notwithstanding that the plea was discontinued against two, the others were driven to answer.

In a writ of ravishment of ward, brought against several, the plea was discontinued against two. The others came into Court and demanded judgment whether they ought to answer since the plea was discontinued against two. This notwithstanding he<sup>2</sup> was driven to answer.

## III.

## Ravishment of ward.

In a writ of ravishment of ward against several discontinuance against two was alleged. Yet the others were driven to answer.

<sup>1</sup> *I.e.* it was made the basis of a challenge by *Denom*, who appeared on behalf of those against whom the plea had not been discontinued.

<sup>2</sup> This may refer to the counsel for the defendants.



## Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 306 verso. Norfolk and Suffolk.  
Written by Burnedissehe.

Henricus Gilberd persona ecclesie de Wirling-Woith' et Robertus Wolsy de Gislham attachiati fuerunt ad respondendum Priori de Bromholm de placito quare ipsi simul cum Sarra que fuit vxor Andree filii Gilberti de Giselham. Henricum filium et heredem Andree Gilberd de Giselham infra etatem existentem cuius maritagium ad ipsum Priorem pertinet. apud Bromholm In Comitatu Norff. inuentum vi et armis rapuerunt et abduxerunt contra voluntatem ipsius Prioris Et contra pacem etc Et vnde Idem Prior per Thomam de Antyngham attornatum suum queritur quod predicti Henricus et Robertus simul etc. die Lune proxima ante festum Inuencionis sancte crucis anno Regni Regis Edwardi patris domini Regis nunc Tricesimo quinto. predictum heredem apud Bromholm inuentum cuius maritagium ad ipsum pertinet eo quod predictus Andreas pater etc tenuit de ipso Priore vnum Mesuagium et quinque acras terre cum pertinenciis in Giselham in Comitatu Suff. per homagium et fidelitatem et seruicium militare videlicet ad scutagium domini Regis quadraginta solidorum cum accederit (*sic*) duodecim denar(ios) Et ad plus plus Et ad minus minus etc et per seruicium decem et nouem denar(iorum) et vnus oboli per annum et faciendi sectam ad Curiam ipsius Prioris de Carletone C(o)leuille de tribus septimanis in tres septimanas et per seruicium reddendi vnam gallinam quolibet secundo anno et inueniendi quolibet secundo anno eidem Priori vnum hominem singulis diebus in autumpno ad metend(a) blada ipsius Prioris ad cibum ipsius Prioris De quibus seruiciis Idem Prior fuit seisisus per manus predicti Andree etc Et Idem Andreas obiit in homagio ipsius Prioris: vi et armis etc rapuerunt et abduxerunt contra pacem etc. vnde dicit quod deterioratus est et dampnum habet ad valenciam viginti librarum Et inde producit sectam etc.

Et Henricus et Robertus per Adam de Westhale attornatum suum veniunt Et defendunt vim et iniuriam qu(ando) etc. Et bene defendunt quod ipsi nuncquam rapuerunt predictum heredem sicut predictus Prior queritur Et de hoc ponunt se super patriam.

Et Prior similiter.

Ideo preceptum est vicecomiti Norff' quod venire faciat hic a die sancti Hillarii in xv dies xii etc per quos etc Et qui nec etc ad recognoscendum etc Quia tam etc.

## Note from the Record.

De Banco Roil 195a, Mich. 6 Edw. II., membr. 306 verso. Norfolk and Suffolk.  
Written by Burnedishe.

Henry Gilberd, parson of the church of Worlingworth, and Robert Wolsy of Gisleham, were attached to answer the Prior of Bromholm<sup>1</sup> in a plea why together with Sarah wife that was of Andrew the son of Gilbert of Gisleham they had ravished and abducted with force and arms against the will of the said Prior and against the peace etc. Henry, son and heir of Andrew Gilberd of Gisleham, who is below age, whose marriage belongs to the said Prior and whom they had found at Bromholm in the County of Norfolk. And concerning this matter the said Prior complains by Thomas of Antyngham, his attorney, that the said Henry and Robert together etc. on (May 1, 1307) the Monday next preceding the feast of the Finding of the Holy Cross in the thirty-fifth year of the reign of King Edward father of our Lord the present King, with force and arms ravished and abducted against the peace etc. the said heir whom they had found at Bromholm, and whose marriage belongs to him (the said Prior) because the said Andrew father etc. held from the said Prior one messuage and five acres of land with the appurtenances in Gisleham in the County of Suffolk by homage fealty and knight's service, to wit, for the scutage of our Lord the King whenever it is 40s. (paying) 12*d.* and if more then more and if less then less etc., and by the service of 19½*d.* a year and of doing suit at the court of the said Prior of Carlton Colville from three weeks to three weeks, and by the service of rendering one hen every second year and of finding every second year for the said Prior one man every day in autumn to harvest the crops of the said Prior for the food of the said Prior,—and of these services the said Prior was seised by the hands of the said Andrew etc., and the said Andrew died in the homage of the said Prior. And (the Prior) says that (by the ravishment) he has suffered loss and has damage to the amount of £20. And as to this he produces suit etc.

And Henry and Robert come by Adam of Westhale, their attorney, and deny force and wrong when etc. And well do they deny that they ever ravished the said heir as the said Prior complains. And as to this they put themselves upon the country.

And the Prior likewise.

Therefore the sheriff of Norfolk was commanded that he cause to come here on the quindene of St. Hilary twelve etc. by whom etc. and who are neither etc. to find etc. because both etc.

<sup>1</sup> Bromholm Priory was a Cluniac house, founded as a cell to Castle Acre Priory, co. Norfolk (Dugdale, *Mon.* v, 59). William of Totington, prior at this time, died before March 30, 1313, when the election of his successor, William of Wytton, was notified to the King (*ibid.* p. 61; *V.C.H. Norfolk*,

ii, 363). During the vacancy the King had at first granted the custody to John of Norton and John Pike, but he afterwards ordered them not to interfere further, and to deliver all issues to the sub-prior and convent, according to the custom (*V.C.H. Norfolk*, ii, 360).



53. FITZBENEDICT *v.* FITZWALTER.<sup>1</sup>I.<sup>2</sup>

Vn<sup>3</sup> A. porta<sup>4</sup> bref de Eschete uers vn<sup>5</sup> Willem<sup>6</sup> et demanda certain tenementz par la reson qe vn<sup>5</sup> Robert<sup>7</sup> tint<sup>8</sup> etc. et morust sanz heir etc.<sup>9</sup>

*Laufer.*<sup>10</sup> La ou il<sup>11</sup> dit qil<sup>12</sup> morust sanz heir il<sup>9</sup> dist<sup>9</sup> son<sup>9</sup> talent<sup>9</sup> qe<sup>13</sup> Robert auoit<sup>11</sup> vn frere Walter<sup>14</sup> par noun de qi cesti<sup>15</sup> W uers qi<sup>16</sup> cesti bref est ore porte<sup>16</sup> est issue etc.<sup>9</sup> et est einz etc.<sup>9</sup> iugement<sup>17</sup> si accion etc.<sup>17</sup>

*Loueday.* Robert<sup>12</sup> morust sanz heir prest etc. et ceo veot nostre bref etc.<sup>9</sup>

*Berr.* Il dist q. R. auoit vn frere Water<sup>18</sup> etc.<sup>19</sup> de qi cestui<sup>9</sup> Willem est issue responez a ceo.

*Loueday.* Water<sup>14</sup> fut bastard etc.<sup>20</sup>

*Et alius* miller(e). prest etc.<sup>11</sup>

II.<sup>21</sup>

Eschete *quia sine herede*<sup>22</sup> ou le tenant dit qil fut issue le frere de qi mort il porta le bref et le demaundant dit qe cely frere fut bastard.<sup>22</sup>

Vn Adam porta son bref deschete vers vn W. et demaunda certains tenements etc. par la reson qun Robert le B.<sup>23</sup> tint etc. et morust sanz heir.

*Lauf.* La ou il dit qe Robert morust sanz heir il dit son talent qar il auoit vn frere Wauter<sup>24</sup> par noun de qi cesty W. vers qi le bref est ore porte est issue et son heir etc.

*Hunt* '. Wauter<sup>24</sup> feut Bastard prest etc.

*Et alii* econtra.

III.<sup>25</sup>

Eschete.

Vn Ad(am) porta bref deschete vers Willem quia R tenuit de eo et obiit sine herede.

*Lauf.* R. auoit vn frere Wauter de qi cesti W est issu iugement etc.

*Hunt.* Walter feust bastard.

*A(liu)s q(uod) m(u)lier. ideo ad patriam.*

<sup>1</sup> Reported by C, F, M, P, T, X.

<sup>2</sup> From T. Compared with C, P.

<sup>3</sup> Nota vn C. <sup>4</sup> Add: son C. <sup>5</sup> Om. C. <sup>6</sup> Add: de B: C. <sup>7</sup> Add: Ker P. Roger Ker C. <sup>8</sup> tent C. tient P. <sup>9</sup> Om. C, P. <sup>10</sup> Lamf. C.

<sup>11</sup> Om. P. <sup>12</sup> qe Roger C. qe Robert P. <sup>13</sup> cely C, P. <sup>14</sup> Wauter C, P. <sup>15</sup> cely C. <sup>16-16</sup> etc. C. cesti bref est etc. P. <sup>17-17</sup> etc. C. Om. P.

<sup>18</sup> Wauter C. <sup>19</sup> par noun C, P. <sup>20</sup> prest etc. Et alii econtra C, P.

<sup>21</sup> From M. Compared with F. Headnote from F. <sup>22-22</sup> Om. M. <sup>23</sup> Baker F.

<sup>24</sup> W. F. <sup>25</sup> From X.

53. FITZBENEDICT *v.* FITZWALTER.

## I.

One Stephen brought a writ of escheat against one William and demanded certain tenements for the reason that one Robert held etc. and died without heir etc.

*Laufer.* Whereas he says that (Robert) died without heir, he talks at random, because Robert had a brother, Walter by name, whose issue is this William against whom this writ is now brought, and William is 'in' etc. Judgment whether an action etc.

*Loveday.* Robert died without heir, ready etc. and (that is what) our writ says etc.

BEREFORD C.J. He says that Robert had a brother, Walter etc. whose issue is this William. Answer to this. .

*Loveday.* Walter was a bastard. Ready etc.

And the other (party said that he was) legitimate. Ready etc.

## II.

Escheat because (one died without heir), where the tenant said that he was issue of the brother of him on whose death (the plaintiff) had brought the writ, and the demandant said that that brother was a bastard.

One Stephen brought his writ of escheat against one William and demanded certain tenements etc. for the reason that one Robert le Barkere held etc. and died without heir.

*Laufer.* Whereas he says that Robert died without heir, he talks at random, for he had a brother, Walter by name, whose issue and heir is this William against whom this writ is now brought etc.

*Huntingdon.* Walter was a bastard. Ready etc.

Issue joined.

## III.

Escheat.

One Adam brought a writ of escheat against William, because Robert held of him and died without heir.

*Laufer.* Robert had a brother Walter whose issue this William is. Judgment etc.

*Huntingdon.* Walter was a bastard.

And the other party (said) that (he was) legitimate. Therefore to the country.



## Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 397 recto. Suffolk. Written by Luding'.

Stephanus filius Benedicti per Walterum Rynel attornatum suum petit uersus Willelmum filium Walteri vnum mesuagium cum pertinenciis in Stradesele quod Robertus le Barkere de eo tenuit, et quod ad ipsum Stephanum reuerti debet tanquam escaeta sua. eo quod predictus Robertus obiit sine herede etc. Et vnde dicit quod predictus Robertus tenuit de eo predictum mesuagium per homagium fidelitatem et seruic(ia) octo denariorum per annum et inueniendi duos homines metantes in autupno (*sic*) ad custagia ipsius Stephani de quibus seruiciis idem Stephanus fuit seisis ut de feodo et Iure tempore pacis tempore Edwardi Regis patris domini Regis nunc capiendo inde expletas ad valenciam etc Et obiit sine herede Et ea ratione predictum mesuagium ad ipsum reuerti debet tanquam escaeta sua Et inde producit sectam etc.

Et Willelmus per attornatum suum<sup>1</sup> Et defendit Ius suum qu(ando) etc Et dicit quod accio ei competere non potest petendi predicta tenementa etc Dicit enim quod predictus Robertus non obiit sine herede etc Quia dicit quod idem Robertus habuit quendam fratrem et heredem Walterum nomine de quo exiuit predictus Willelmus qui nunc etc vnde petit iudicium etc.

Et Stephanus dicit quod predictus Walterus nullius heres esse potuit nec debuit, eo quod bastardus fuit Et hoc paratus est per patriam verificare etc vnde petit iudicium etc.

Et Willelmus dicit quod predictus Walterus legitimus fuit et pro legitimo tentus etc et non bastardus sicut predictus Stephanus dicit Et de hoc ponit se super patriam.

Et Stephanus similiter.

Ideo preceptum est vicecomiti quod venire faciat hic a die Pasche in vnum mensem xii etc per quos etc Et qui nec etc Quia tam etc.

54. ANON.<sup>2</sup>

De Escaeta. ou le tenaunt qe auoyt fee taille pria eyde.

Vn Adam porta soun bref desch(ete) vers vne Katerine qe fut la femme vn B. et demaunda certeynz tenemenz cum sa Eschete par la reson qun C. tynt dun G. soun pere qi heir il est etc. le ior et an qil fit felonie pur la quele il fut pendu. de G. descendist le dreit de cel Eschete a A. gore demaunde cum a fitz et heir et les ques a ly deyuent reuertir. pur ceo qe lauaunt dit C. fit felonie pur la quele il fut pendu

<sup>1</sup> Suppl. *venit*.

<sup>2</sup> From G.

**Note from the Record.**

**De Banco Roll 195a, Mich. 6 Edw. II., membr. 397 recto. Suffolk. Written by Luding'.**

Stephen the son of Benedict demands by Walter Rynel, his attorney, against William the son of Walter one messuage with the appurtenances in Stradishall which Robert le Barkere held of him and which ought to revert to the said Stephen as his escheat, because the said Robert died without heir etc. And concerning this he says that the said Robert held of him the said messuage by homage fealty and the services of 8*d.* a year and of finding in the autumn two men to mow at the expense of the said Stephen, and of these services the said Stephen was seised as of fee and of right in time of peace in the time of King Edward father of our Lord the present King, taking thereof the esplees to the value etc., and (Robert) died without heir, and by that reason the said messuage ought to revert to him as his escheat. And as to this he produces suit etc.

And William (comes) by his attorney, and defends his right when etc. And he says that (the demandant) ought to have no action to demand the said tenements etc. For he says that the said Robert did not die without heir etc., for he says that the said Robert had a brother and heir, Walter by name, from whom issued the said William who now etc., and as to this he demands judgment etc.

And Stephen says that the said Walter could not and ought not to be anybody's heir, because he was a bastard. And this he is ready to aver by the country etc., and as to this he demands judgment etc.

And William says that the said Walter was legitimate and held for legitimate etc., and not a bastard as the said Stephen says, and as to this he puts himself upon the country.

And Stephen likewise.

Therefore the sheriff was ordered that he cause to come here in a month from Easter twelve etc. by whom etc. and who are neither etc. because both etc.

**54. ANON.**

**Writ of escheat, where the tenant who had fee-tail prayed aid.**

One Adam brought his writ of escheat against one Catherine widow of one B. and demanded certain tenements as his escheat for the reason that one C. held of one G. his father whose heir he is etc. on the day and in the year when he committed a felony for which he was hanged. From G. the right of this escheat descended to A. who now demands, as son and heir, and they ought to revert to him because the aforesaid C. committed a felony for which he was hanged.



*Miggeley* pur Katerine defendist et dit qe les tenemenz furrent donez a B. et K. et a les heirz B. engendrez de K. B. est mort et ad issue en pleyne vye. en qi le fee et le dreit demurt et prioms eyde de ly.

*Herle.* Eide ne deuet auer. Car si eyde vous fut graunte. ou ceo seroit par commune ley. ou par statut. par commune ley nent. pur ceo qe par commune ley auant <sup>1</sup>est(atut) il<sup>1</sup> pout estre partie a yondre la mise de grant assise. ne par statut. pur ceo qe statut. ne dit forqe il sera receu a defendre soun dreit soulment en .ij. cas. par la ou il voudra perdre par defaute. ou degre rendre. Estre ceo. ele ad plus qe frauntenement. Car bref de Wast ne gist pas vers ly. ne mesqe ele alienast en fee. cely qest prie en eyde nauereyt nul rescuerir par statut de Gloucestre. et mesqe cely a qi la reuersion apent voleynt graunter la reuersion. la femme ne saturnereyt my de sa fealte encontre sa volunte. par qei ele ad plus qe frauntenement. par qei ele ne deit eide auer.

*Toud.* Sire les tenemenz donez a B. K. *vt supra* par qei K. nad qe frauntenement. Estre ceo nous auoms veu leyde estre graunte en teu cas entre Tybaud de verdon(e) etc.

*Herle.* *Non est simile.* Kar en le cas Tebaud. furrent les tenemenz donez en franc mariage. et la femme qe fut cause du doun fut mort pur ceo qele baron nauoit qe frauntenement.

*Berr.* Si K. voleit perdre les tenemenz par defaute. ou rendre. lissue seroit receu deuaunt iugement. par qei<sup>2</sup> dunge nauereit ele eide.

*Herle.* A ceo qe vous dites qil sera receu a defendre soun dreit cest pur estatut qest ordene pur echure meschef en delaies. qe pout estre

<sup>1-1</sup> These words are not clearly written. Something was to be interlined but was scratched out.    <sup>2</sup> Interlined.

*Miggeley* for Catherine defended and said that the tenements were given to B. and K. and the heirs of B. begotten of K. B. is dead and has issue in full life in whom the fee and the right remain, and we pray aid of him.

*Herle.* You ought not to have aid. For if aid were granted you, that would be either by common law or by statute.<sup>1</sup> (It could) not (be) by common law, because by common law before the statute he could be a party to join the mise of the grand assize; nor (could it be) by statute, because the statute says only<sup>2</sup> that he shall be received to defend his right only in two cases, (namely) where (the defendant) would lose by default or by voluntary surrender. Moreover, she has more than freehold, for a writ of waste does not lie against her, and even if she did alienate in fee he who is prayed in aid would have no recovery by the statute of Gloucester.<sup>3</sup> And even if he to whom the reversion belongs would grant the reversion, the wife would not attorn herself for the fealty against her will. Therefore she has more than freehold, (and) therefore she ought not to have aid.

*Toudeby.* Sir, the tenements (were) given to B. (and) Catherine (as above) and therefore Catherine has only freehold. Moreover, we have seen that aid was granted in a case like this between Tybaud of Verdone<sup>4</sup> etc.

*Herle.* This is not a similar case,<sup>5</sup> for in the case of Tybaud the tenements were given in frank-marriage and the woman who was the cause of the gift was dead, (and the aid was granted) because the husband had only freehold.

BEREFORD C.J. If Catherine wanted to lose the tenements by default or (by) surrender, the issue would be received before judgment. Why, then, should she not have aid?

*Herle.* As to what you say that he will be received to defend his right, that is because of the statute<sup>6</sup> which is made to avoid the mischief of delays, which could happen in such a case. But as to having aid,

<sup>1</sup> Stat. Westm. II, c. 3.

<sup>2</sup> Stat. Westm. II, c. 3: '... eodem modo si tenens in dotem per legem Anglie vel aliter ad terminum vite vel per donum in quo reservatur reversio fecerit defaltam vel reddere voluerit admittantur heredes et illi ad quos spectat reversio ad responsionem si venerint ante iudicium. . . .'

<sup>3</sup> Stat. Glouc. c. 3.

<sup>4</sup> Observe the reference to a precedent.

<sup>5</sup> Counsel tries to 'distinguish' the cases.

<sup>6</sup> Stat. Westm. II, c. 3; cp. above note 2. The statute goes on: '... et si per defaltam aut redditionem redatur iudicium tunc habeant heredes et illi ad quos spectat reversio post mortem huiusmodi tenentium recuperare per breve de Ingressu. . . .' In other words, the reversioner can be received before judgment in order to prevent the delay which would be entailed by a separate action, but if he does not come before judgment the action (by a writ of entry) is still reserved to him.



en teu cas. Mes qant al eide auer ele ne deit auer par statut ne par commune ley *propter causam predictam*.

*Kinge*. Si Katerine pledast ore en chef. et ele perdist quel recouerir auereit lissue *quasi diceret* nul pur ceo qe cest vn bref de dreit et *per consequens* leyde necessarie.

*Herle*. En vos descrecions.

## 55. THE PRIOR OF ST. ANDREW'S OF YORK v. EURE.<sup>1</sup>

Finis et Cirograff(um) vbi Rex mandauit Iusticiariis litteras suas pro licencia concordandi habenda et quod finis coram eis leuaretur.

Iohannes de Eure et Emma<sup>2</sup> vxor eius summoniti fuerunt ad respondendum Priori sancti Andree Ebor(acensis)<sup>3</sup> de placito quod teneant ei conuencionem inter eos factam de xi toftis vno molendino xv bouatis terre<sup>4</sup> xvi acris terre<sup>4</sup> et vna Roda .ij. acris prati vna acra bosci<sup>5</sup> et xl<sup>6</sup> solidatis redditus cum pertinenciis in Kirkeby Clyuelaund Brounmdeby Stokesley et buscheby<sup>7</sup> etc. et modo venerunt tam predictus Prior quam predicti <sup>8</sup>I. E.<sup>8</sup> et concordati sunt et predictus Prior offert domino Regi xx solidos pro licencia concord(andi) et super hoc idem Prior profert literas domini Regis<sup>9</sup> patentes que testantur

<sup>1</sup> From *P*. Compared with the Record.    <sup>2</sup> Agnes *Rec*.    <sup>3</sup> de Ebor. *Rec*.  
<sup>4</sup> *Om. Rec*.    <sup>5</sup> vasti *Rec*.    <sup>6</sup> sexaginta *Rec*.    <sup>7</sup> Buskeby *Rec*.    <sup>8-8</sup> Iohannes  
et Agnes *Rec*.    <sup>9</sup> *Add: hic Rec*.

she ought not to have aid under statute or by common law for the aforesaid reason.

*Kynge(shemede)*. If Catherine were to plead now in chief and if she lost, what recovery would the issue have? (he implied none) because this is a writ of right; and consequently the aid is necessary.

*Herle*. At your discretion.

## 55. THE PRIOR OF ST. ANDREW'S OF YORK *v.* EURE.

Fine and chirograph, where the King sent to the Justices his letters as to a licence to make concord and that the fine should be levied before them.

John of Eure and Agnes his wife<sup>1</sup> were summoned to answer the Prior of St. Andrew's of York<sup>2</sup> in a plea that they keep him a covenant made between them as to eleven tofts, one mill, fifteen bovates of land, sixteen acres of land, and one rood two acres of meadow, one acre of wood, and sixty shillings' worth of rent with the appurtenances in Kirkby, Cleveland, Bromby, Stokesley and Busby<sup>3</sup> etc. And now came as well the said Prior as the said John and Agnes and they made concord and the said Prior offers to our Lord the King 20s. for a licence to make concord, and thereupon the said Prior proffers letters patent of

<sup>1</sup> John of Eure was a commissioner of oyer and terminer 1311-1317 (*Cal. Pat.* 1307-13, *passim*; 1313-17, *passim*). He was appointed to view the forest of Galtres in 1310, and was assessor of the tallage in Northumberland and Yorkshire in 1312 (*ibid.* 1307-13, pp. 315, 521). His park at Mitford in Northumberland was broken in this year (*ibid.* p. 474). He was sheriff of Yorkshire before 1312 (*Cal. Close* 1307-1313, p. 417) and escheator north of Trent 1313-1315 (*Cal. Pat.* 1307-13, pp. 573, 592; 1313-17, *passim*; *Cal. Close* 1307-13, *passim*). He was in Scotland before 1312, in which year he was acquitted of £12, due from him for amercements, in compensation for his horses lost in the King's service there (*Cal. Close* 1307-13, p. 421). In 1313 he was one of those commissioned to view the bridge at Bradley in Yorkshire, and compel those liable for its condition to execute the necessary repairs (*Cal. Pat.* 1307-13, p. 601). In 1317 he was accused of having attacked Louis de Beaumont and two

cardinals travelling with him at Akeld in Northumberland (*ibid.* 1317-21, p. 88). He had a safe-conduct for his journey south to meet Aymer de Valence in 1318, and in the same year received pardon as an adherent of Lancaster (*ibid.* pp. 147, 231). In 1322, however, an order for his arrest was issued, and shortly afterwards he was killed by John Hert (*ibid.* 1321-24, pp. 82, 127). His wife Agnes survived him and petitioned for dower (*Cal. inq. p.m.* vi, no. 339, no. 732).

<sup>2</sup> The Priory of St. Andrew of York was a house of Gilbertine Canons founded about 1200 (Dugdale, *Mon.* vi, 962). There is no list of Priors in the *Monasticon*, and the name of the Prior at the time of Eure's gift is uncertain: Robert of Scalleby held the office about 1288, and Ralph in 1335 (*V.C.H. Yorks.* iii, 256).

<sup>3</sup> Licence to alienate these lands to the Priory of St. Andrew's, York, was granted to John of Eure and Agnes in 1311 (*Cal. Pat.* 1307-13, p. 400).



quod licet de communi consilio domini Regis statutum sit quod non liceat viris religiosis vel aliis ingredi feodum alicuius Ita quod ad manum mortuam deueniat sine licencia Regis et Capitalis domini de quo res illa inmediate tenetur, idem tamen dominus Rex predicto Priori volens et conuentui graciam facere specialem: concessit et licenciam dedit pro se et heredibus suis quantum in ipso est predictis <sup>1</sup>I. et Emme<sup>1</sup> quod ipsi predicta tenementa cum pertinenciis dare possint eidem Priori et conuentui habenda et tenenda sibi et successoribus suis ad sustentacionem<sup>2</sup> trium Capellanorum diuina singulis diebus in Capella beate Marie de Kyrkeby<sup>3</sup> in cliuielound<sup>4</sup> pro anima clare memorie domini <sup>5</sup>Regis E. quondam<sup>5</sup> patris domini Regis nunc et pro animabus predictorum Iohannis et Emme<sup>6</sup> et omnium fidelium defunctorum imperpetuum celebraturorum. <sup>7</sup>similiter licenciam dedit specialem<sup>7</sup> eisdem priori et conuentui quod ipsi predicta tenementa<sup>8</sup> a prefato Iohanne et E.<sup>9</sup> recipere possint et tenere sibi et successoribus<sup>10</sup> predictis ad sustentacionem<sup>2</sup> trium Capellanorum diuina singulis diebus in Capella predicta pro animabus predictorum<sup>11</sup> imperpetuum celebraturorum ut predictum est.<sup>12</sup> et profert breue<sup>13</sup> clausum Iusticiariis suis<sup>14</sup> directum quod testatur quod idem dominus Rex concedit<sup>15</sup> et licenciam dedit pro se et heredibus suis quantum in ipso est. predictis <sup>1</sup>I. E.<sup>1</sup> quod ipsi tenementa predicta dare possint et assignare predicto Priori et conuentui habenda et tenenda sibi et successoribus suis vt predictum est. <sup>16</sup>et quod mandauit prefatis Iusticiariis<sup>16</sup> quod finem inde inter partes predictas hic coram eis in banco leuari permitterent secundum legem et consuetudinem Regni Regis iuxta tenorem literarum Regis predictarum.

Ideo finis predictus admittitur et habeant Cirograff(um) per Iohannem de Deuon(ia).<sup>17</sup>

Rotulo clxxxi<sup>0</sup>.

#### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 181 recto. Yorkshire.  
Written by Burnedishe.

The record agrees with the above transcript except in the variants shown in the footnotes and a few other minor differences.

<sup>1-1</sup> Iohanni et Agneti *Rec.*      <sup>2</sup> sustentacionem *Rec.*      <sup>3</sup> Kirkeby *Rec.*  
<sup>4</sup> Clyueland *Rec.*      <sup>5-5</sup> Edwardi quondam Regis Anglie *Rec.*      <sup>6</sup> Agnetis *Rec.*  
<sup>7-7</sup> Et *Rec.*      <sup>8</sup> cum pertinenciis interlined *Rec.*      <sup>9</sup> Agnete *Rec.*      <sup>10</sup> *Add:*  
suis *Rec.*      <sup>11</sup> predictis *Rec.*      <sup>12</sup> *Add:* similiter licenciam dedit specialem *Rec.*  
<sup>13</sup> *Add:* domini Regis *Rec.*      <sup>14</sup> *Add:* hic *Rec.*      <sup>15</sup> concessit *Rec.*      <sup>16-16</sup> etc.  
Mandando *Rec.*      <sup>17</sup> Denum Narratorem etc. *Rec.*

our Lord the King which witness that although by the common council of our Lord the King it is enacted that it shall not be lawful for religious men or others to enter anybody's fee so that it should come to the mortmain without licence from the King and the chief lord of whom that property is held directly, yet the said Lord the King, wishing to shew special favour to the said Prior and Convent has granted and given licence for himself and his heirs in so far as in him is to the said John and Agnes that they might give to the said Prior and Convent the said tenements with the appurtenances to be had and held to themselves and their successors for the upkeep of three chaplains who would for ever celebrate divine service every day in the chapel of Blessed Mary of Kirkby in Cleveland for the soul of our Lord the King Edward of glorious memory father of our Lord the present King and for the souls of the said John and Agnes and of all faithful departed. Similarly he gave special licence to the said Prior and Convent that they might receive the said tenements from the said John and Agnes and hold them to themselves and their said successors for the upkeep of three chaplains who will for ever celebrate divine service every day in the said chapel for the souls of the aforesaid, as was said above. And he proffers a close writ of our Lord the King<sup>1</sup> directed to his Justices, which witnesses that the said Lord the King has granted and given licence for himself and his heirs in so far as in him is, to the said John and Agnes that they might give and assign the said tenements to the said Prior and Convent to be had and held to themselves and their successors as has been said above, and commanding<sup>1</sup> his said Justices that they permit a fine in this matter to be levied here before themselves in the Bench between the said parties according to the law and custom of the King's realm in conformity with the tenor of the King's said letters.

Therefore the said fine is admitted. And let them have a chirograph by *John Denom*,<sup>1</sup> narrator.

Roll 181.

#### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 181 recto. Yorkshire.  
Written by Burnedisshe.

The record agrees with the above transcript, except in the variants shown in the footnotes and in a few other minor differences.

<sup>1</sup> Supplied from the Record.



56. BEREFORDE AND BRANDESTONE.<sup>1</sup>

Fyn.

William de Ber.<sup>2</sup> conust le manoir de<sup>3</sup> C<sup>3</sup> contenu en le bref estre le droit H. de Bramdestone<sup>4</sup> et pur cele reconis(aunce) H. graunta<sup>5</sup> les deux parties du manoir forspris xl sous de rente a W. de Ber.<sup>2</sup> et graunta<sup>5</sup> la terce partie de mesme le manoir qe A. tient en noun de dower et granta<sup>5</sup> les xl. sous de rente qe vn<sup>6</sup> tient a terme de vie, lez queux apres lour deces alui deueroit<sup>7</sup> reuertir ensemblement ofue les deux parties rem(ainantes)<sup>8</sup> a William et Edm(und) et az heirs Edm(und) desoun corps egendrez. Et si Edm(und) de vie etc. rem(aindre)<sup>9</sup> a Iohan <sup>10</sup>fitz et heir H.<sup>10</sup> et alez heirs de soun corps etc.<sup>11</sup> Et si Iohan etc.<sup>12</sup> az dreitz heirs W. *Et fuit<sup>13</sup> tunc seisitus.<sup>14</sup>*

## Note from the Record.

Feet of Fines, Case 245, file 41, No. 28. Warwickshire.

Hec est finalis concordia facta in Curia domini Regis apud Westmonasterium in Octabis sancti Michaelis, anno regni Regis Edwardi filii Regis Edwardi sexto coram Lamberto de Trikyngham, Heruico de Stantone, Iohanne de Benstede, et Henrico Le scrope, Iusticiariis et aliis domini Regis fidelibus, tunc ibi presentibus, Inter Willelmum de Bereforde et Edmundum filium eius querentes, et Henricum de Brandestone deforciantem, de Manerio de Greneberghe cum pertinenciis, vnde placitum conuencionis summonitum fuit inter eos in eadem Curia, Scilicet quod predictus Willelmus recogn(ouit) predictum Manerium cum pertinenciis esse Ius ipsius Henrici. Et pro hac recognicione, fine, et concordia: idem Henricus concessit predictis Willelmo et Edmundo duas partes predicti Manerii cum pertinenciis exceptis quin-

<sup>1</sup> From *T.* Compared with *C.* Headnote from *C.*    <sup>2</sup> *Berr. C.*    <sup>3</sup> *Om. C.*  
<sup>4</sup> *Bradestow C.*    <sup>5</sup> *grante C.*    <sup>6</sup> *Add: B. C.*    <sup>7</sup> *dussent C.*    <sup>8</sup> *remeynent C.*  
<sup>9</sup> *remeynent C.*    <sup>10-10</sup> *le fitz Henr(i) C.*    <sup>11</sup> *engendrez C.*    <sup>12</sup> *Add: remey-*  
*nent C.*    <sup>13</sup> *Will. C.*    <sup>14</sup> *Add: etc. C.*

## 56. BEREFORDE AND BRANDESTONE.

Fine.

William of Bereforde made conusance that the manor of Grandborough contained in the writ is the right of Henry of Brandestone and for that conusance Henry granted the two parts of the manor excepting 40s. worth of rent to William of Bereforde and granted the third part of the same manor which Margaret of Brandestone holds in the name of dower, and the 40s. worth of rent which one Michael of Fandone holds for term of life, (and) which after their deaths ought to revert to him, together with the two remaining parts, to William and Edmund and to the heirs of Edmund of his body begotten. And if Edmund were to die etc. the remainder to John son<sup>1</sup> and heir of Henry<sup>2</sup> and to the heirs of his body etc. And if John etc., to the right heirs of William. And he was then seised.<sup>3</sup>

## Note from the Record.

Feet of Fines, Case 245, file 41, No. 28. Warwickshire.

This is the final concord made in the Court of our Lord the King at Westminster on (October 6, 1312) the octaves of Michaelmas, in the sixth year of the reign of King Edward the son of King Edward, before<sup>4</sup> Lambert of Trikyngham, Hervy of Stantone, John of Benstede and Henry le Scrope, Justices, and other faithful subjects of our Lord the King, then there present, between William of Bereforde and Edmund his son, complainants,<sup>5</sup> and Henry of Brandestone, deforciant,<sup>6</sup> as to the manor of Grandborough with the appurtenances, as to which a plea of covenant had been summoned between them in the same Court: to wit, that the said William made conusance that the said manor with the appurtenances is the right of the said Henry, and for this conusance, fine and concord the said Henry granted to the said William and Edmund two parts of the said manor with the appurtenances

<sup>1</sup> *Corr.*: brother. <sup>2</sup>*Corr.*: Edmund.

<sup>3</sup> It does not seem easy to explain the insertion of this case in the reports except because the Chief Justice of the Common Bench was a party to the fine.

<sup>4</sup> Since BEREFORDE C.J. is one of the parties to the fine, his name does not appear among those of the justices.

<sup>5</sup> The Chief Justice died before August 28, 1326, and an order was sent to the escheator not to intermeddle with the manor of Grandborough, as William and Edmund held it jointly (*Cal. inq. p.m.* vi, no. 748; *Cal. Close* 1323-7, p. 615).

<sup>6</sup> This Henry of Brandestone (co. Leicester) was sixteen in 1298 (*Cal. inq. p.m.* iii, no. 524) and cannot therefore be identified with the man of that name who was attorney to the Abbot of Savigny in 1303 (*Cal. Pat.* 1301-7, p. 144), though he may perhaps have been presented to the vicarage of Bradford in the diocese of Salisbury in 1316 (*Cal. Pat.* 1313-17, p. 555). He was a nephew of Henry of Brandestone, successively dean and bishop of Salisbury (*ibid.* 1279-88, pp. 133, 416, 469), who died in 1288 (*ibid.* p. 533).



**Note from the Record—continued.**

quaginta solidatis redditus in eisdem duabus partibus, Habend(as) et tenend(as) eisdem Willelmo et Edmundo et heredibus ipsius Edmundi de corpore suo procreatis de Capitalibus dominis feodi illius per seruicia que ad illas duas partes sicut predictum est pertinent imperpetuum Et preterea idem Henricus concessit pro se et heredibus suis quod predictæ quinquaginta solidate redditus cum pertinenciis quem Michael de Farndone tenuit ad terminum vite ex dimissione predicti Henrici. Et etiam quod tertia pars predicti Manerii cum pertinenciis quam Margareta que fuit vxor Hugonis de Brandestone tenuit in dotem de hereditate predicti Henrici die quo hec concordia facta fuit, et qui quidem redditus cum pertinenciis post decessum ipsius Michaelis et predicta tertia pars cum pertinenciis post decessum ipsius Margarete, ad predictum Henricum et heredes suos debuerunt reuerti : post decessum ipsorum Michaelis et Margarete sicut predictum est integre remaneant predictis Willelmo et Edmundo et heredibus ipsius Edmundi predictis, Tenend(i) simul cum predictis duabus partibus predicti Manerii sicut predictum est que eis per finem istum remanent de Capitalibus dominis feodi illius per seruicia que ad predicta redditum et terciam partem pertinent imperpetuum Et si contingat quod predictus Edmundus obierit sine herede de corpore suo procreato. tunc post decessum ipsorum Willelmi et Edmundi predictum Manerium cum pertinenciis integre remanebit Iohanni fratri predicti Edmundi, et heredibus de corpore suo procreatis, Tenend(um) de Capitalibus dominis feodi illius per seruicia que ad illud Manerium pertinent imperpetuum. Et si contingat quod predictus Iohannes obierit sine herede de corpore suo procreato : tunc post decessum ipsius Iohannis predictum Manerium cum pertinenciis integre remanebit Rectis heredibus predicti Willelmi, Tenendum de Capitalibus dominis feodi illius per seruicia que ad illud Manerium pertinent imperpetuum Et predictus Henricus et heredes sui warantizabunt predictis Willelmo et Edmundo et heredibus ipsius Edmundi predictis Et predicto Iohanni et heredibus suis predictis Et etiam Rectis heredibus predicti Willelmi si predicti Edmundus et Iohannes obierint sine her(edibus) de corporibus suis procreat(is), predictum Manerium cum pertinenciis contra omnes homines imperpetuum.

Et hec concordia facta fuit presentibus predictis Michaele et Margareta, et eam concedentibus. et fecerunt predictis Willelmo et Edmundo fidelitates in eadem Curia.

**Note from the Record**—*continued.*

excepting fifty shillings' worth of rent in the said two parts, to have and hold forever of the chief lords of that fee to them the said William and Edmund and to the heirs of the said Edmund of his body begotten, by the services which belong to those two parts, as has been said above. And moreover the said Henry granted for himself and his heirs that the said fifty shillings' worth of rent with the appurtenances which Michael of Farndone held for the term of his life by the lease of the said Henry, and also that the third part of the said manor with the appurtenances which Margaret, widow of Hugh of Brandestone, held in dower of the inheritance of the said Henry<sup>1</sup> on the day when this concord was made, (and which rent with the appurtenances after the decease of the said Michael, and the said third part with the appurtenances after the decease of the said Margaret, ought to revert to the said Henry and his heirs,) shall after the decease of the said Michael and Margaret, as was said above, remain entirely to the said William and Edmund and to the said heirs of the said Edmund, to be held together with the said two parts of the said manor (which remain to them by this fine) as has been said of the chief lords of that fee forever by the services which belong to the said rent and third part. And if it should happen that the said Edmund should die without heir of his body begotten, then after the decease of the said William and Edmund the said manor with the appurtenances shall entirely remain to John the brother of the said Edmund and to the heirs of his body begotten, to be held of the chief lords of that fee forever by the services which belong to that manor. And if it should happen that the said John should die without heir of his body begotten, then after the decease of the said John the said manor with the appurtenances shall entirely remain to the right heirs of the said William, to be held forever of the chief lords of that fee by the services which belong to that manor. And the said Henry and his heirs will warrant the said manor with the appurtenances against all men forever to the said William and Edmund and to the said heirs of the said Edmund, and to the said John and to his said heirs and also to the right heirs of the said William if the said Edmund and John should die without heirs of their bodies begotten.

And this concord was made in the presence of the said Michael and Margaret, and they granted it, and did fealty in the same Court to the said William and Edmund.

<sup>1</sup> Margaret was the daughter of Bartholomew of Yattendon in Berkshire, and brought that manor with the manor of Redenhale in Norfolk in marriage. The manor of Grandborough is not mentioned among the possessions of

her husband at the time of his death: the only Warwickshire manor being that of Lapworth, of which he had been enfeoffed by his brother. He also held lands in Easington and Grafton (*Cal. ing. p.m.* iii, no. 524).



57. MORTONE *v.* MORTONE.<sup>1</sup>

*Pax calumpniata.* ou cely qe fut estraunger a la fyn fut receu de delayer la fin etc. pur ceo <sup>2</sup>qe la femme qe fut partie a ceo rendre nauoit ren en ceus tenemenz si noun a la volunte<sup>2</sup> . . .

Vn Ion et Agnes sa femme conussurent certeynz tenemenz estre le droit vn Ric. et ceo ly renderent en la curt. par qei suruynt vn Adam et dit par

*Pass.* qil ne dust estre receu a rendre etc. Kar il dit qe<sup>3</sup> la femme qe fut partie a ceo rendre nauoit ren en ceus tenemenz. si noun ala volunte vn Ion. qe icy est. qe ceus tenemenz ly lessa a tenir a sa volunte. et pria qe nule conissaunce se feyt a sa desheritaunce.

*Migg.* qe auoit retret la pees dit. sire si vous veiet qe ceo seit a vostre desheritaunce. mettet vostre cleyrn en la fyn.

*Pass.* A ceo ne seroms my chaces. qe nous auoms dit qe le fraunc-tenement demurt en nostre persone de mesme les tenemenz et dioms qele ne soun baroun ne pount rendre nostre fraunc-tenement.

*Migg.* Si la curt veye qe nous auoms mest(ier) a desclarer nostre estat. et qele eyt pouer a trier nostre estat par ceo bref nous dirroms asset.

*Berr.* Nous auoms asset pouer.

*Et hoc dixit pro lege.*

*Migg.* dit qe les tenemenz furrent en la seisine vn<sup>4</sup> Symund. le quel eneffa vn Adam le premer baron mesme ceste Agn. a eus. et a lor heirz. pus Adam deuya. A. prit mesme cesti Ion abaron en tele manere sunt il seisi. et cel estat vnt il rendu. iugement.

*Pass.* Nous grauntoms ben gentre vous et vostre baron vous purchac(eastes) *ut supra*. mes vous dioms. qe apres le deces A. mesme ceste A. nous eneffa de mesme les tenemenz a nous et a nos heirz. et pus nous ly relessames<sup>5</sup> a tenir a nostre volunte. issint ele est tenaunt a nostre volunte. iugement si ele deyue a ceste reconissaunce estre receu.

*Migg.* Nous auoms conu<sup>6</sup> et contenu<sup>6</sup> lestat qe nous preymes yoynt oue nostre baroun. <sup>7</sup>pret etc. saunz chaunger etc.<sup>7</sup>

<sup>1</sup> From *G*. Compared with *F*, which, however, contains only the later part of the case, beginning at the point shown below by the mark <sup>4</sup>, because the first part of the report was on a folio which is missing. <sup>2-2</sup> This does not stand in the marginal note, which, instead of the passage, contains a reference to the text. The passage has, therefore, been supplied from the text, namely, from that part which begins at the point shown by the next footnote. <sup>3</sup> Here begins the passage referred to in <sup>2-2</sup>. <sup>4</sup> Here begins the report in *F*. <sup>5</sup> lessames mesme les tenemenz *F*. <sup>6</sup> continue (later correction) *F*. <sup>7-7</sup> saunz changer etc. prest etc. *F*.

57. MORTONE *v.* MORTONE.

Fine challenged, where one who was stranger to the fine was received to delay the fine etc. because the woman who was a party to this rendering had nothing in these tenements save at will. . . .

One John and Agnes<sup>1</sup> his wife made conusance that certain tenements were the right of one Richard<sup>1</sup> and rendered them to him in the Court. Thereupon<sup>2</sup> there intervened one Adam and said by

*Passeley* that he should not be received to render, for he said that the woman who was a party to this surrender had nothing in these tenements save at the will of one John who is here, (and) who leased to her these tenements to hold at his will. And he prayed that no conusance be made to his disinheritance.

*Miggeley*, who had withdrawn the fine, said: Sir, if you see that this is to your disinheritance, enter your claim into the fine.

*Passeley*. We shall not be driven to that, for we have said that the freehold of the said tenements remains in our person and we say that neither she nor her husband can render our freehold.

*Miggeley*. If the Court should see that it is our business to declare our estate, and that the Court has the power to try our estate upon this writ, we shall say enough.

BEREFORD C.J. We have enough power.

And he said this as a statement of law.

*Miggeley* said that the tenements were in the seisin of one Simon who enfeoffed one Adam the first husband of this same Agnes, to them and to their heirs. Afterwards Adam died, Agnes took this same John for husband. In this way they are seised and this estate they have rendered. Judgment.

*Passeley*. We fully grant that between you and your husband you purchased (as above), but we tell you that after the decease of Adam this same Agnes enfeoffed us of the same tenements to us and to our heirs, and afterwards we released them to her to hold at our will. Thus she is tenant at our will. Judgment whether she ought to be received to this conusance.

*Miggeley*. We have continued<sup>3</sup> the estate which we took jointly with our husband. Ready etc. (we have continued it) without changing etc.

<sup>1</sup> Since the Record speaks only of the woman, it has been thought expedient by way of exception to leave the names of the parties as they appear in the Report. The Record says that the conusance was made by the woman only.

<sup>2</sup> *Par qei* means 'wherefore,' but in this connection perhaps 'whereupon' or 'on which occasion' would be better.

<sup>3</sup> Supplied from *F*, where this is a later correction.



*Pass.* Qe vous nous enfeffates *vt supra.* et repreytes estat. a nostre volunte pret etc.

*Migg.* Truuet seurte des issues.

*Pass.* Mes truuet vous seurte pur la descente.<sup>1</sup>

*Berr.* <sup>2</sup>Mes vous truueret seurte lun et lautre.<sup>2</sup>

Et pus se acorderent hors de curt.

Par<sup>3</sup> lendemeyn

*Migg.* fit demaunder cely qe suruynt a desturber la fyn.

Qe ne vynt pas.

Par qei la fyn fut receu etc.

### Notes from the Record.

#### I

De Banco Roll 195a, Mich. 6 Edw. II., membr. 1 recto. Shropshire. Clerk unknown.

Iohanna que fuit vxor Michaelis de Mortone summonita fuit ad respondendum Roesie filie Michaelis de Mortone de placito quod teneat ei conuencionem inter eos (*sic*) factam de vno mesuagio vna carucata terre et quatuor acris prati cum pertinenciis in Ee.

Et modo ven(erunt) tam predicta Iohanna quam predicta Roesia et eadem Roesia cogn(ouit) predicta tenementa cum pertinenciis esse Ius ipsius Iohanne vt ea que eadem Iohanna habet de dono predictae Roesie et pro hac recognicione etc. eadem Iohanna concessit eadem tenementa prefate Roesie tenenda sibi et heredibus de corpore suo exeuntibus de capitalibus dominis feodi etc.

Et super hoc venit quidam Iohannes de Mortone et dicit quod predicta Iohanna ad predictum finem in curia hic leuandum admitti non debet Quia dicit quod eadem Iohanna nichil habet in predictis tenementis nisi ad voluntatem ipsius Iohannis de anno in annum Dicit enim quod eadem Iohanna dum sola fuit ipsum feoffauit de eisdem tenementis Tenendis sibi et heredibus suis imperpetuum per quod quidem feoffamentum ipse seisisit fuit per tres annos continue, et postea tenementa illa concessit prefate Iohanne, Tenenda ad voluntatem ipsius Iohannis Et hoc paratus est verificare etc. et petit quod predictus finis inter partes predictas inde non leuetur etc.

Et Iohanna dicit quod ipsa et predictus Michael quondam vir etc. coniunctim perquisiuerunt tenementa illa Tenenda sibi et heredibus suis imperpetuum et quod ipsa superuixit predictum Michaellem et seisinam suam inde continue continuauit absque hoc quod predictus Iohannes aliquid habuit in eisdem Et de hoc ponit se super patriam.

Et Iohannes similiter.

Ideo preceptum est vicecomiti quod venire faciat hic<sup>4</sup>

<sup>1</sup> disseite etc. *F.*

<sup>2-2</sup> mes lun et lautre fra einz ceo qe vous passetz *F.*

<sup>3</sup> *Add:* qei *F.*

<sup>4</sup> Here the sentence stops and the word next following is

*Postea.*

*Passeley.* Ready etc. that you enfeoffed us (as above) and took back the estate at our will.

*Miggeley.* Find sureties for the issues.

*Passeley.* But you find sureties for the descent.

BEREFORD C.J. You shall find sureties for one and the other.

And then they came to terms out of Court.

Wherefore<sup>1</sup> on the morrow

*Miggeley* caused him who had intervened to disturb the fine to be called.

And he did not come.

Therefore the fine was received etc.

### Notes from the Record.

#### I.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 1 recto. Shropshire. Clerk unknown.

Joan widow of Michael of Mortone was summoned to answer Rose the daughter of Michael of Mortone in a plea that she keep her a covenant made between them as to one messuage, one carucate of land and four acres of meadow with the appurtenances in Eye.<sup>2</sup>

And now came as well the said Joan as the said Rose, and the said Rose made conusance that the said tenements with the appurtenances are the right of the said Joan as those which the said Joan had by the gift of the said Rose, and for that conusance etc. the said Joan granted the said tenements to the said Rose to hold to herself and to the heirs issuing of her body, of the chief lords of the fee etc.

And thereupon comes one John of Mortone and says that the said Joan ought not to be admitted to levy the said fine in the Court here, for he says that the said Joan has nothing in the said tenements save at the will of the said John from year to year. For he says that the said Joan, while she was a single woman, enfeoffed him of the said tenements to hold to himself and to his heirs forever, and by that feoffment he was seised continuously for three years, and afterwards granted the said tenements to the said Joan, to hold at the will of the said John. And this he is ready to aver etc., and he prays that the said fine may not be levied in this matter between the said parties etc.

And Joan says that she and the said Michael sometime her husband etc. did jointly purchase those tenements to be held to themselves and to their heirs forever, and that she survived the said Michael and has continued her seisin thereof, without interruption, so that the said John has had nothing in them. And as to this she puts herself upon the country.

And John likewise.

Therefore the sheriff was commanded that he cause to come here

<sup>1</sup> Supplied from *F*.

<sup>2</sup> Eye Farm, in the parish of Leighton.



Notes from the Record—*continued*.

Postea venit predictus Iohannes de Mortone et bene concessit quod predictus finis inde inter partes predictas leuetur.

Et predicta Roesia dat vnam marcam pro licencia concordandi etc.

Et habent Cirographum per W. de Muggele Narratorem etc.

## II.

## Feet of Fines, Case 194, file 8, no. 50. Shropshire.

Hec est finalis concordia facta in Curia domini Regis apud Westmonasterium, in Crastino sancti Martini, anno regni Regis Edwardi filii Regis Edwardi sexto, coram Willelmo de Bereford, Lamberto de Trikyngham, Heruico de Stantone, Iohanne de Benstede, et Henrico le Scrope, Iusticiariis, et aliis domini Regis fidelibus, tunc ibi presentibus. Inter Roesiam filiam Michaelis de Mortone querentem, et Iohannam que fuit vxor Michaelis de Mortone deforciantem, de vno mesuagio vna Carucata terre, et quatuor acris prati cum pertinenciis in Ee. vnde placitum conuencionis summonitum fuit inter eos (*sic*) in eadem Curia. Scilicet quod predicta Roesia recognouit predicta tenementa cum pertinenciis esse Ius ipsius Iohanne. Et pro hac recognicione, fine et concordia, eadem Iohanna concessit predictae Roesie predicta tenementa cum pertinenciis, et illa ei reddidit in eadem Curia, Habenda et tenenda eidem Roesie et heredibus de corpore suo procreatis, de Capitalibus dominis feodi illius per seruicia que ad illa tenementa pertinent imperpetuum. Et si contingat quod predicta Roesia obierit sine herede de corpore suo procreato, tunc post decessum ipsius Roesie, predicta tenementa cum pertinenciis integre reuertentur ad predictam Iohannam et heredes suos, quiete de aliis heredibus ipsius Roesie, Tenenda de Capitalibus dominis feodi illius, per seruicia que ad illa tenementa pertinent imperpetuum.

58. ATTE GRACECHURCH *v.* SELMERIE.<sup>1</sup>

<sup>2</sup>Noua disseisina qe le fiz le issue dela vne seor porta vers le fiz dil issue lautre seor, qe entra les tenemenz apres la mort sun vnkle qe furent assignez a la purpartie sa aele.

Ex quo placito liquet quod resort(itus) fieri non debet de aliquo, si habuit exitum fratrem vel sororem. Et quod hereditas prius foret eschaeta quam descend(eret) de sanguine integro in sanguinem partitum. Et quod perquisitum filii resort(iri) debet in sanguinem patris.<sup>2</sup>

Iohan <sup>3</sup>de Garsch'<sup>3</sup> porta vn assise <sup>4</sup>de nouele disseisine<sup>4</sup> vers Iohan <sup>5</sup>de Selm(er)ie<sup>5</sup> qi feut deinz age et autrez nomez en le bref et se pleint

<sup>1</sup> From *M.* Compared with *B*, *F.* Headnote from *F.* This is Vulg. 19.  
<sup>2-2</sup> The headnote in *B* is: Noua disseisina ou les parties disoient lour euidens a lenqeste ou il estranga le saunk lun *vt patet*. <sup>3-3</sup> ate Graschirche *B.* atte Garschirche *F.* <sup>4-4</sup> *Om. B.* <sup>5-5</sup> le Skymerie *B.* Sirner' *F.*

**Notes from the Record**—*continued*.

Afterwards the said John of Mortone came and did fully grant that the said fine be levied between the said parties.

And the said Rose gives one mark for a licence to make concord etc.

And (let them) have a chirograph by *W. of Miggeley*, narrator, etc.

**II.****Feet of Fines, Case 194, file 8, no. 50. Shropshire.**

This is the final concord made in the Court of our Lord the King at Westminster, on (November 12, 1312) the morrow of Martinmas, in the sixth year of the reign of King Edward the son of King Edward, before William of Bereford, Lambert of Trikyngham, Hervy of Stanton, John of Benstede, and Henry le Scrope, Justices, and other faithful subjects of our Lord the King, then there present, between Rose the daughter of Michael of Mortone, complainant, and Joan, widow of Michael of Mortone, deforciant, as to one messuage, one carucate of land, and four acres of meadow with the appurtenances in Eye, concerning which a plea of covenant had been summoned between them in the said Court: to wit, that the said Rose made conusance that the said tenements with the appurtenances are the right of the said Joan, and for this conusance, fine, and concord, the said Joan granted to the said Rose the said tenements with the appurtenances, and rendered them to her in the said Court, to have and hold to the said Rose and to the heirs issuing of her body, of the chief lords of that fee by the services which belong to those tenements, forever. And if it should happen that the said Rose should die without heir of her body begotten (*sic*) then after the decease of the said Rose the said tenements with the appurtenances shall entirely revert to the said Joan and her heirs, quit of the other heirs of the said Rose, to be held forever of the chief lords of that fee, by the services which belong to these tenements.

**58. ATTE GRACECHURCH v. SELMERIE.**

Assize of novel disseisin which the son of the issue of the one sister brought against the son of the issue of the other sister, who (had) entered the tenements after the death of his uncle. (The tenements consisted in) a rent assigned to the share of his grandmother.

From this plea it appears that resort<sup>1</sup> ought not to be made from one who had issue, brother, or sister, and that an inheritance would escheat before it would descend from (people of) whole (*i.e.* the same) blood to (people of) partial (*i.e.* half) blood, and that the purchase of the son ought to resort in (the line of) the blood of the father.

John atte Gracechurch<sup>2</sup> brought an assize of novel disseisin against John of Selmerie who was within age, and (against) others named in

<sup>1</sup> *I.e.* leap backwards, *Year Book* 1 & 2 Edw. II, S.-S., *Year Books*, vol. i. p. 131.

<sup>2</sup> Supplied from *B*.



estre disseisi de son fraunctenement et myst en sa viue etc.<sup>1</sup> vn mees etc. en la paroche de Bischop(es)g(ate).<sup>2</sup>

Touz nomez en le bref forspris Iohan de S. disoient qil ne clamerent rien etc.

Iohan respondist com tenant et dit qil entra apres la mort vn Willem atte more com cosyn et heir. et demaunda iugement si assise deit estre sanz tittle monstrar etc.

*Scrop.* Seisi et disseisi et prioms lassise.

*Berr.* Viegne lassise.

*Scrop* dit en euidence <sup>3</sup>a lassise<sup>3</sup> qun Austin feut seisi de mesme le mees ensemblement oue autres tenemens de A. descendist a Alice et Margerie com a vn heir la purpartie feut fait entre eux et cel mees assign(e) a la purpartie Alice de Alice descendist a Willem atte more de W. pur ceo qil morust etc. resortist a Margerie com a aunte seor Alice mere Willem de Margerie descendist a Symond de Symond a Iohan qe ore se pleint estre disseisi.<sup>4</sup>

*Lauf.* La ou vous fetes vostre resort de W. pur ceo qil morust etc. a Margerie etc a M ne poil nyll resorte estre fait qe Willem auoit vn frere elyse de qi mesme cesti Iohan est issue et issint entra il com cosyn et heir W.

*Scrop.* Alice auoit vn baron Daud le qel engendra mesme cesti Willem Alice morust il prist autre femme Iuliane de qi il engendra Elis vostre pere et issint Elys tot estrange au saunke Alice de qi ceux tenemens mouerent qe plus toust serreient<sup>5</sup> eschete qe eux descen-dr(eient) en le <sup>6</sup>saunk Daud.<sup>6</sup>

*Lauf.* La ou vous dites qe Elys feut estrange a Alice nous vous dioms qil feut fitz Alice et frere Willem nee et engendre de mesme le pere et de mesme la mere et estre ceo ceux tenemens furent del purchase Willem et resort(ent)<sup>7</sup> en le saunk le pere la<sup>8</sup> vous auetz fet le resort en le saunk la mere.

*Heruy.* Conu chose est dune part et dautre qe W atte more morust seisi de mesme le mees bone gentz vous nauez plus a dire mes si cel mees feut del purchase W ou de son heritage depart sa mere et si Elys

<sup>1</sup> et en plainte *B.* *Sim. F.*    <sup>2</sup> *B.* hors de Bisshopesgate *F.*    <sup>3-3</sup> de lassise *B.* del assise *F.*    <sup>4</sup> *Add:* ensi entra il apres la mort W. cum plus prochain heire et seisi fust si la qe Iohan et les autres ly disseis(irent) *F.*    <sup>5</sup> *Add:* les tenemenz *B.* *F.*    <sup>6-6</sup> demy sanke etc. *F.*    <sup>7</sup> deiuent ressortir *F.*    <sup>8</sup> la ou *B.* *F.*

the writ and complained that he had been disseised of his freehold, and put into his view etc. one messuage etc. in the parish of Bishopsgate.

All those named in the writ except John of Selmerie said that they claimed nothing etc.

John answered as tenant and said that he had entered after the death of one William atte More as cousin etc. and prayed judgment whether there should be an assize without (the plaintiff) showing title etc.

*Scrope.* Seised and disseised and we pray the assize.

BEREFORD C.J. Let the assize come.

*Scrope* said in evidence<sup>1</sup> to the assize that one Austin was seised of the same messuage together with other tenements; from Austin it descended to Alice and Margery as to one heir. The partition was made between them and this messuage was assigned to the share of Alice, from Alice it descended to William atte More, from William because he died (without heir of his body) etc. it resorted to Margery as to (his) aunt sister of Alice the mother of William, from Margery it descended to Simon, from Simon to John who now complains that he is disseised.

*Lauffer.* Whereas you make your resort from William because he died (without heir) etc. to Margery etc., no resort can be made to Margery because William had a brother, Ellis, whose issue this same John is, and thus he (John) entered as cousin and heir of William.

*Scrope.* Alice had a husband, David, who begot this same William. Alice died, he took another wife, Juliane, of whom he begot Ellis your father, and thus Ellis is a complete stranger to the blood of Alice, from whom these tenements 'moved,' for they would rather escheat than descend in the line of David.

*Lauffer.* Whereas you say that Ellis was a stranger to Alice, we tell you that he was a son of Alice and brother of William, born and begotten of the same father and of the same mother, and moreover these tenements were of the purchase of William and resorted in the (line of) blood of the father, while<sup>2</sup> you have made the resort in the (line of) blood of the mother.

STANTON J. It is a thing acknowledged by both parties that William atte More died seised of the same messuage. Good men, you have nothing more to say except whether that messuage was of the purchase of William or of his inheritance on the side of his mother, and

<sup>1</sup> This is an interesting hint as to the way in which the finding of the assize was arrived at. 'In evidence' probably means that each party had to give to the assize his version of the

facts. Cp. the following case (below p. 199 n. 4) where 'in evidence' a fine is put forward.

<sup>2</sup> Supplied from *B, F.*



pere Iohan feut son frere nee et engendre de mesme le pere et de mesme la mere <sup>1</sup>ou noun.

*Lassise.*<sup>2</sup> Qe partie de cel mees feut del heritage W. de part sa mere<sup>1</sup> et partie de son purchace, et qe Alice auoit iij. fitz dun pere engendres I. W. et Elys Iohan entra en religion viuant Daudid son pere <sup>3</sup>eordre de frere purchasa de<sup>3</sup> Loundr(e) et feut profess(e). W. entra apres la mort sa mere com heir etc de Elys issit mesme cesti Iohan <sup>4</sup>de Slim(er)e<sup>4</sup> qe ore est tenant et Willem morust sanz heir et issint est af(?)<sup>5</sup> il einz<sup>6</sup> com<sup>6</sup> plus prochein heir.

*Berr.* Dites vous qil ne disseisist point par qei agarde la Court qil ne preigne rien <sup>7</sup>par son bref etc.<sup>7</sup>

59. ANON.<sup>8</sup>

<sup>9</sup>Nota ou (les) parties mi(rent) auaunt (fyn) et ne feut (mye receu).<sup>9</sup>

En vn bref dael<sup>10</sup> les parties desc(endirent) en vn enqueste. au iour qe lenqueste deust passer la partie myst auaunt vn fyn en euidence al enqueste et<sup>11</sup> feut mye receu <sup>12</sup>de mettre fyn en euidence<sup>12</sup> pur ceo qe ele serroit barre si ele feut mys auaunt sanz<sup>13</sup> ceo qe lenqueste se<sup>14</sup> ioint et ceo par *Berr.*

60. FITZSAMUEL *v.* BRAYTHE.<sup>15</sup>

I.<sup>16</sup>

Ael.

Osbern le fiz Samuel et Robert soun frere<sup>17</sup> bref de Ael et demanderent certeyn tenemenz en Marom et conterent de la seisine Sare descendist a Samuel cum afiz de Samuel a osbern et Robert cum a fiz pur ceo qe les tenemenz sount departables entre maldes.

<sup>1-1</sup> *Om. B.*    <sup>2</sup> *Add: dist B.*    <sup>3-3</sup> en ordre des freres precheours a *B, F.*  
<sup>4-4</sup> le Skymerie *B.* le Scimiere *F.*    <sup>5</sup> *Om. B, F.*    <sup>6</sup> *Om. F.*    <sup>7-7</sup> etc. et  
Iohan saunz Iour etc. *B, F.*    <sup>8</sup> From *M.* Compared with *B, F.* This is Vulg.  
18.    <sup>9-9</sup> The headnote in *B* is: Nota ou les parties mystrent auant fyn en  
euidense denqeste et ne furent pas (receu). *vide causam.* The headnote in *F* is:  
Nota de fyn mys en euydence de enquest. nest pas resceuable.    <sup>10</sup> *Om. B, F.*  
<sup>11</sup> *Add: ne B, F.*    <sup>12-12</sup> *Om. F.*    <sup>13</sup> einz *F.*    <sup>14</sup> *Add: vst F.*    <sup>15</sup> Reported  
by *C, E, P.*    <sup>16</sup> From *P.*    <sup>17</sup> Suppl. porterent.

whether Ellis the father of John was his brother born and begotten of the same father and the same mother, or no.

*The assize.* (We say) that part of that messuage was of the inheritance of William on the side of his mother and part was of his (own) purchase, and that Alice had three sons begotten by one father, John, William, and Ellis. John entered into religion in the lifetime of David, his father, (namely,) <sup>1</sup>into the order of the Preaching Friars<sup>1</sup> of London,<sup>2</sup> and became professed. William entered after the death of his mother as heir etc. From Ellis there issued this same John of Selmerie who is now tenant, and William died without heir. Thus he is<sup>3</sup> in as next heir.

BEREFORD C.J. You say that he (the defendant) did not commit disseisin, therefore the Court awards that he (the plaintiff) take nothing by his writ etc.

### 59. ANON.

Note that the part(y) put forward a fine and it was not received.

In a writ of ael the parties descended to an inquisition. On the day when the inquisition should have passed the party put forward a fine in evidence<sup>4</sup> to the inquisition, and he was not received to put the fine into evidence because it (the fine) would have been a bar if it had been put forward (before, so that) the inquisition would not have been joined. And this judgment was given by BEREFORD C.J.

### 60. FITZSAMUEL *v.* BRAYTHE.

#### I.

Ael.

Osborn the son of Samuel, and Robert his brother, (brought) a writ of ael and demanded certain tenements in Mareham and counted of the seisin of Sarah (from whom it) descended to Samuel as son, from Samuel to Osborn and Robert as sons because the tenements are partible between males.

<sup>1-1</sup> Supplied from *B, F*. The passage in *M* is obviously faulty, due to misreading on the part of the copyist.

<sup>2</sup> The first house of the Dominicans was in Holborn near the Old Temple, but in 1276 they moved into the City to the site on the Thames near Ludgate still known as Blackfriars (*V.C.H. London*, i, 498).

<sup>3</sup> We disregard the doubtful *af* in *M*, which has no counterpart in the other two MSS. and is most probably due to some mistake.

<sup>4</sup> Cp. this case, in which a fine is put forward 'in evidence to the inquisition,' with the preceding case (above, p. 198 n. 3), where counsel makes a statement 'in evidence to the assize.'



*Scrop.* Il vnt fet cete descende de Sare a samuel et issint as demandants etc. nous vous dioms qe mesme cel Sare de qi seisine etc. auoit vn fiz Mich(el) de qi sount issu Willem et Iohan qe sont en plein vie iugement de pus quil sont auxi pres de char et de sanke a sare com vous si saunz ces deuez estre receu.

*Toud.* Vsage de la ville de marom est tiel qe si vne feme eit heritage et preingne deuz barouns si ele eit issue de primer baroun madles il parteront le heritage entre euz saunz ceo qe le issue del s(econd)e Baroun riens en partera et uous dioms qe mesme ceste sare auoit ij barouns scilicet I. le primer de qi issit samuel pere les demandaunz Richard le seconde de qi issit Michel pere Willem et Iohan iugement del houre qe nous voloms auerer le vsage estre tiel sil le dedient si sanz eux ne seroms receu.

*Denoun.* Vous auez fet vostre discente a la commune ley et ore aleggez vn vsage qe encontre commune dreit sanz ceo qe uous fetes mencioun de cel vsage en countaunt. iugement si ore auenir deuez.

*Scrop Iustice.* Il nauoient pas mester de alegger auaunt qe vous le contrepleidastez. par quey dites autrechoce.

*Scrop.* Vous aleggez vsage entre ques de mesme le saunke et de mesmes les tenemenz vsez etc.

*Toud.* Vn Agn(es) fuit en herite et auoit ij barouns issint qe issue le primer baroun partir(ent) saunz ceo quil le seconde riens ne ont prest etc. et de mesme le soke de Maroun.

*Scrop.* E nous iugement del houre qe nous nauoms pleide forqe de tenemenz compris deinz nostre bref et vous ne poez mustrer coment cel vsage ad este vsee en vostre saunke ne en le saunke des tenants qe cele tere vnt tenue qe ore est en demande si mestier nous seit a cel vsage respondre.

*Scrop Iustice.* Par cas il necheie vnqe en mesme le saunke auaunt ore de mesmes les tenemenz qe sil vst escheu et cel vsage ne vst point este vsee com de partir entre les heirs del primer baroun y tornereit par cas a ceux qe ore demandent en preiudice.

*Scrope.* They have made this descent from Sarah to Samuel and thus to the demandants etc. (But) we tell you that that same Sarah on whose seisin etc. had a son Michael from whom issued William and John who are in full life. And since they are as near to Sarah by flesh and blood as you are, judgment whether you ought to be received without them.

*Toudeby.* The usage in the vill of Mareham is such that if a woman has an inheritance and takes two husbands, if she has issue, males, by the first husband, they will divide the inheritance between them so that the issue of the second husband will not partake thereof. And we tell you that this same Sarah had two husbands, namely Richard the first husband, from whom issued Samuel the father of the demandants, and Robert the second husband from whom issued Michael the father of William and John. Judgment whether we shall not be received without them, since we are willing to aver that the custom is such if they deny it.

*Denom.* You have made your descent under the common law and now you allege a custom which is contrary to common right, without having made mention of that usage in your count. Judgment whether now you ought to get (to that).

SCROPE J. They had no occasion to allege (the usage) before you counterpleaded. Therefore say something else.

*Scrope.* You allege the custom. (Say) between what persons of the same blood and as to the same tenements (it was) used etc.<sup>1</sup>

*Toudeby.* One Agnes had inherited and had two husbands so that the issue of the first husband divided (the tenements) and the (issue of) the second have nothing. Ready etc. And (they were) of the same soke of Mareham.

*Scrope.* And since we have only pleaded as to tenements comprised in our writ and you cannot show that that custom has been used in your (line of) blood or in the (line of) blood of the tenants who have held this land which is now in demand, we pray judgment whether we need answer to (the allegation of) that usage.<sup>2</sup>

SCROPE J. Perhaps it has never happened before in the same (line of) blood as to the same tenements, for if it had happened and the custom had not been applied as to parting between the heirs of the first husband, that might turn perhaps to the prejudice of those who demand now.<sup>3</sup>

<sup>1</sup> Since the usage is contrary to the common law, the party who pleads it must show cases when it was applied. Counsel asks, moreover, for precedents as to the tenements in dispute.

<sup>2</sup> The tenants insist that the usage should be proved not only as to the vill in general, but as to these particular tenements.

<sup>3</sup> This statement probably means that one cannot base the refusal of applying the usage on the fact that it had never been applied to these particular tenements, for there may never have arisen an opportunity of applying it. If it had, and if the usage had not been applied, then the usage could *not* be pleaded.



*Toud.* Les tenantz en Marom tiennent en sokage et vous dioms qe toux les tenements de mesme soke vnt este partiz enter le issue del primer baroun qant il eschei du tens dount il ny ad memorie prest etc.

*Berr.* Est cete tere qest ore en demande tenu par seruice de cheualier.

*Toud.* Nanil en sokage.

*Berr.* Si ele fut tenu par seruice de cheualier ele ne pount estre de partie par nul vsage entre madles ne pur qant vous ne aleggez pas vsage de pais Cite Bourge ne aunciene demesne par qei il semble qe vostre foundement est mout feble qar Marom est ville de *ospelend*.

*Toud.* Vsee entre touz iceuz del soke de Marom qant il escheu de tens dount il nad memorie prest etc. quel auerement vous refusez iugement etc.

Nota de  
villa de  
Kymefare

## II.<sup>1</sup>

Ael.

Robert fuitz Samuel et Osbern son frere porterent bref de Ael vers vn tenant et pristrent lur titil de la seisine vne Sare de Sare a Samuel come a fuitz de Samuel a Robert et a Osbern come a ij fitz qe ore demandent pur ceo qe les tenemenz sont departables.

*Denum.* Samuel auoit ij freres. A. et B. de A. issist C. qe vnkore est en pleyne vie de B. issist E. qe vnkore est en pleyne vie iugement si saunz eux pussetz rien demander depus qe vous dites qe les tenemenz sont departables.

*Toud.* Il y ad tel vsage en la vile de Marun ou les tenemenz sont qe si vne femme qe ad heritage prent baron et eit issue masle et le baron deuie et ele prent altre baron et eit issue masle qe le issue del primer baron auera lenter saunz ceo qe laultre rien y auera et vous dioms

<sup>1</sup> From *E*.

*Toudeby.* The tenants of Mareham hold in socage and we tell you that all the tenements of the same soke have been divided<sup>1</sup> between the issue of the first husband when (the case) would happen, from a time whereof memory runs not. Ready etc.

BEREFORD C.J. Is this land which is now in demand held by knight's service?

*Toudeby.* No. In socage.

BEREFORD C.J. If it were held by knight's service it could not by any usage be parted between males. However,<sup>2</sup> you do not allege a custom of the country, city, borough, or ancient demesne, wherefore it seems that your foundation is very weak, because Mareham is a vill of *ospelend*.<sup>3</sup>

*Toudeby.* Used between all those of the soke of Mareham when- (ever the case) happened from a time whereof memory runs not. Ready etc. And you refuse that averment. Judgment etc.

Note  
concerning  
the vill of  
Kymefare

## II.

Ael.

Robert the son of Samuel and Osborn his brother brought a writ of ael against a tenant and took their title on the seisin of one Sarah. From Sarah (the tenements descended) to Samuel as son, from Samuel to Robert and to Osborn as two sons who now demand, because the tenements are partible.

*Denom.* Samuel had two<sup>4</sup> brothers, A and B, from A there issued C who is still in full life, from B there issued E who is still in full life, judgment whether you can demand anything without them since you say that the tenements are partible.

*Toudeby.* There is in the vill of Mareham where the tenements are (situated) a custom to this effect, that if a woman who has an inheritance takes a husband and has male issue and the husband dies and she takes another husband and has male issue, then the issue of the first husband will have the whole and the other (issue) will have nothing in (the

<sup>1</sup> A messuage in Mareham and certain lands in Wilkesby held of the Bishop of Carlisle in socage were divided on the death of Robert of Bavent in 1320 between his sons Peter and John 'because those lands are partible' (*Cal. inq. p.m.* vi, 270).

<sup>2</sup> *I.e.* even although it is held in socage.

<sup>3</sup> This is an unusual expression, which we are unable to explain. It

occurs only in the first report of this case.

<sup>4</sup> According to the Record there were altogether four, and not three, brothers. One of them, Simon, died without heir of his body. The letters A, B, C, and E are arbitrarily substituted by the reporter in order to simplify the case by avoiding confusion between the Roberts. That is why in the translation we have kept the letters.



qe Sare auoit ij barons R. et Iohan de Richard le primer baron issist Samuel de Iohan isserent les altres iugement si sould ne deuoms estre receu.

*Scrop.* Iugement dount de vostre count. depus ceo qe vous auetz dit qe les tenemenz sont departables et de dreit tenemenz qe sont departables. deiuent estre departis auxi bien entre les issues del seconde baron com del primer baron et ore alleggetz vous vn vsage qest coudre commune vsage de quel vsage vous deuierietz auoir fet mencion en count countaunt et cel nauetz mye fait iugement.

*Ber.* Il allegge ore assethe par tens. dites outre.

*Denum.* Entre quex persons parties.

*Russel.* Vne Agn(es) auoit tenemenz en mesme la ville de mesme la tenure et prist baron et auoit issue masle le baron morust et ele prist altre baroun et auoit issue masle et le primer issue auoit lenter saunz ceo qe laultre issue rien yauoit.

*Denum.* Nous ne pledoms de nules tenemenz for qe de cez qe sont en demande et vous ne dites pas qe ceux tenemenz oint estee departies. iugement.

*Tou.* Parauenture le cas ne auint vnke en cel saunke auant ore mes nous vous dioms qe touz les tenemenz de cele tenure et de mesme la ville qant tel cas auenesist. vserent cel vsage et auoms assigne certeyns persons. entre quex la chose ad estee vsee et demandoms iugement.

*Ber.* Si vous allegg(etz) vsage vsee parmy vn pais. vous auerietz ascune r(eson) mes desicom vous ne alleggetz for qe vn vsage de ville le quel vsage ne se lie nient. forqe entre eux qe le ount vsee et vous ne dites pas qil le ount vsee mes alleggetz vn vsage vsee entre estranges persons par qey il semble qe parmy tel vsage ne les poetz neient lier.

### III.<sup>1</sup>

*De Auo ou vsage fut allegge.*

De Sare descendy le fe et le demesne a Samuel cum a fiz de Samue a Osbern et a Roger qe ore demandent cum a ij frerez et vn heir pur ceo qe lez tenemenz sunt departables.

*Scrop.* Il ad dit qe lez tenemenz sunt departables. et vous dioms

<sup>1</sup> From C.

inheritance). And we tell you that Sarah had two husbands, Richard and Robert, from Richard, the first husband, there issued Samuel, from Robert there issued the others. Judgment whether we alone ought not to be received.

*Scrope.* Judgment of your count. For you said that the tenements are partible, and by law tenements which are partible should be parted as well between the issue of the second husband as between that of the first husband ; and now you allege a custom which is against the common usage, and of that (particular) custom you ought to have made mention in counting your count, and you did not do that. Judgment.

BEREFORD C.J. He alleges (it) now timely enough. Say something else.

*Denom.* Between what persons (were the tenements) parted (in the way which you allege) ?

*Russel.* One Agnes had tenements in the same vill by the same tenure and she took a husband and had male issue, the husband died and she took another husband and had male issue, and the first issue had the whole and the second issue had nothing in it.

*Denom.* We do not plead now as to any tenements except those that are in demand, and you do not say that these tenements have been parted. Judgment.

*Toudeby.* Perhaps the case has never happened in this (line of) blood before now, but we tell you that all the tenements of this tenure and of the same vill when(ever) such a case happened have used that custom, and we have specified certain persons between whom the rule has been applied, and we pray judgment.

BEREFORD C.J. If you would allege a custom used throughout the country you would have some r(eason), but since you allege only a custom of a vill, and that custom only applies<sup>1</sup> between those who have used it and you do not say that they have used it but you allege a usage between strangers, therefore it seems that you cannot bind<sup>2</sup> them by such a usage.

### III.

Writ of ael where a usage was alleged.

From Sarah the fee and the demesne descended to Samuel, as son, from Samuel to Osborn and Robert, who now demand, as two brothers and one heir, because the tenements are partible.

*Scrope.* He has said that the tenements are partible, and we tell

<sup>1</sup> *ne se lie* : is not binding ?

<sup>2</sup> *lier*.



qe Sare de qi seisine il ad demande si auoit .iij. fiz. samuel W. et S. de Willem issit Richard de Richard A et B. de .S. issit vn .I. de .I. Alice et Beatrice qi sunt en pleyne vie iugement si sanz eux. Roger et Osbern rien pussent demander.

*Toud.* Le vsage de Mar' est tel qe la ou vne femme ad heirz de .ij. barouns. lez heirs madles del primer baroun engendrez auerount le heritage enterement sanz ceo qe lez heirz del seconde baroun riens auerount et vous dioms qe Sar auoit .ij. barouns. scilicet Henri et Robert. de Henri. issit Samuel de S. Osbern et Roger qe ore demandent et de Robert le seconde Baroun issit Willem et S. de ceux lez autres *ut supra* et ceux. rens naueront solom lez vsages de Mar(un).

*Scrop.* Vous auez dit qe lez ten(emen)z sunt departables. ou la ley veot qe touz lez heirs deyuent parter etc. mez vous dites qe le vsage de Mar(un) est qe lez heirz engendrez del primer baroun aueront lenter sanz ceo qe ceux del seconde baroun rens aueront et cest vn vn (*sic*) vsage especial en vne ville dount vous nauez pas fet mencion en vostre counte : iugement.

*Toud.* Nous auoms dit le vsage en pledant et ceo suffit iugement.

*Scrop.* Le vsage de Hampton est qe le fiz pusnee auera lenter del heritage et (o)r deit home counter descend(ant) a vn tel fiz pusne solom lez vsages de Hamptone. *sic ex parte ista*. Et de autre part nest pas tut vn vsage de vn grant pays. et vsage de vne ville qe nest aillours vse si noun en cele ville ou il couent qe homme face mencion en countant de cel vsage.

*Heruy.* Il vous ad dit .iij. foiz en pledaunt dites outre.

*Scrop.* Vous dites qe lez tenemenz sunt departables. entre qi departables.

*Toud.* Nous voloms auérer le vsage.

*Scrop.* Si vous ne pussez dire qe lez tenemenz sunt departiz entre ascunes de noz auncestres en nostre sanke ou entre ascunes cele tere tenantz iugement.

you that Sarah on whose seisin he demands had three<sup>1</sup> sons, Samuel, W. and S., from William there issued Richard, from Richard A and B, from S. there issued one I., from I. Alice and Beatrice<sup>2</sup> who are in full life. Judgment whether Robert and Osborn can demand anything without them.

*Toudeby.* The custom of Mareham is such that where a woman has heirs by two husbands, the male heirs begotten of the first husband shall have the inheritance entirely so that the heirs of the second husband shall have nothing, and we tell you that Sarah had two husbands, namely, Richard and Robert, from Richard there issued Samuel, from Samuel Osborn and Robert who now demand, and from Robert the second husband there issued William and S., from these the others (as above), and according to the custom of Mareham these shall have nothing.

*Scrope.* You said that the tenements are partible, and the law requires that all the heirs should partake etc., but you say that the custom of Mareham is that the heirs begotten of the first husband will have the whole and those of the second husband will have nothing. And this is a special usage in a vill and you made no mention of it in your count : judgment.

*Toudeby.* We have mentioned the usage in pleading and that is sufficient. Judgment.

*Scrope.* The custom of Hampton is that the younger son shall have the whole of the inheritance and now in descending to such a younger son according to the custom of Hampton one must count (of the custom). The same applies in this case. And on the other hand the custom of a whole country is not all the same as the custom of a vill, (a custom) which is not used elsewhere but in that vill, and in such a case one must in counting one's count make mention of that custom.

STANTON J. He has told you (that) three times in pleading. Say something else.

*Scrope.* You say that the tenements are partible. Between whom partible?

*Toudeby.* We are willing to aver the custom.

*Scrope.* If you cannot say that the tenements were parted between any of our ancestors in our (line of) blood or between any tenants of that land,<sup>3</sup> judgment.

<sup>1</sup> Here again there is a mention of three sons only (see above, p. 201, n. 4), and it seems best to leave the names as they stand in the Report.

<sup>2</sup> This version is the only one to mention the women.

<sup>3</sup> One is tempted to think that Counsel requires the establishment of the custom, either in the same family or as to tenants of the same land—in other words, the principle might have a personal or a real application.



*Toud.* Qe lez tenemenz en la ville etc. sunt touz departables et souent vnt este departiz et qe ceo est le vsage prest etc.

*Scrop.* Mez vous ne dites pas qe ceux tenemenz vnques furent departiz.

*Toud.* Il put estre qe le cas vnques ne aduynt qe ily auoyent .ij. heirz madles entre ceux ceux tenemenz purreint estre departiz et par tant ne sera pas lez vsage de la vile defet(e).

*Berr.* Vous clamez vsage qe vous ne vsez pas ne vnques ne vsastez ne vous ne poez dire qe cest vsage du pays.

Et sic ad iudicium. si debet r(espo)ndere nec dic(it) quod tenementa fuerunt inter aliquos an(te)a partita vel inter aliquos tene(n)tes terram illam.

#### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 95 verso. Lincolnshire.  
Written by Luding'.

Robertus filius Samuelis de Marun et Osbertus frater eiusdem Roberti filii Samuelis per Willelmum de Tyntone attornatum suum petunt versus Robertum Braythe de Marun et Idoniam vxorem eius duo mesuagia cum pertinenciis in Marun de quibus Sarra filia Ricardi filii Suonis de Marun auia predictorum Roberti filii Samuelis et Osberti cuius heredes ipsi sunt fuit seisita in dominico suo vt de feodo die quo obiit etc Et vnde iidem Robertus et Osbertus per attornatum suum dicunt quod predicta Sarra auia etc fuit seisita in dominico suo vt de feodo tempore pacis tempore H. Regis aui domini Regis nunc, capiendo inde expletas ad valenciam etc Et de ipsa Sarra descendit feodum etc cuidam Samueli vt filio et heredi Et de ipso Samuele descendit feodum etc. istis Roberto et Osberto qui nunc petunt vt filiis et heredibus eo quod tenementa sunt partibilia inter heredes masculos etc. Et inde producunt sectam etc.

Et Robertus Braythe et Idonea per Ricardum de Bolingbroke attornatum suum veniunt Et defendunt Ius suum qu(od) etc Et dicunt quod non debent eis inde ad huiusmodi narrationem respondere, Dicunt enim quod cum predicti Robertus et Osbertus per narrationem suam asserunt feodum predictorum tenementorum descendisse de predicta Sarra auia etc prefato Samueli tantum: vt filio etc eadem Sarra habuit quatuor filios scilicet quosdam Simonem Robertum Radulphum et predictum Samuelem qui quidem Simon obiit sine etc Et de predicto Roberto exiuit quidam Gilbertus et de ipso Gilberto exierunt quidam Robertus Alanus et Simon etc. Et de ipso Radulpho exiuit quidam Robertus Et de ipso Roberto exierunt quedam Alicia et Beatrix, que quidem Alicia et Beatrix simul cum predictis Roberto filio Gilberti Alano et Simone fratribus eiusdem Roberti sunt superstites

*Toudeby.* Ready etc. that the tenements in the vill etc. are all partible and have often been parted and that this is the custom.

*Scrope.* But you do not say that these tenements were ever parted.

*Toudeby.* It may be that there never came about the case that there were two male heirs between whom these tenements could have been parted, and thereby the custom of the vill will not be defeated.

BEREFORD C.J. You claim (a) usage which you do not use and which you have not used, (and) you cannot say that it is the custom of the country.

And thus (the case stands over) for judgment whether he ought to answer and he does not say that the tenements were parted before between any (ancestors) or between any tenants of that land.

#### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 95 verso. Lincolnshire.  
Written by Luding'.

Robert the son of Samuel of Mareham and Osbert brother of the said Robert son of Samuel, by William of Tyntone, their attorney, demand against Robert Braythe of Mareham and Edene his wife two messuages with the appurtenances in Mareham of which Sarah the daughter of Richard the son of Suo of Mareham, grandmother of the said Robert the son of Samuel and Osbert, whose heirs they are, was seised in her demesne as of fee on the day on which she died etc. And of which the said Robert and Osbert say by their attorney that the said Sarah grandmother etc. was seised in her demesne as of fee in time of peace in the time of Henry the King, grandfather of our Lord the present King, taking thereof the esplees to the amount etc. And from that Sarah the fee etc. descended to one Samuel as son and heir, and from that Samuel the fee etc. descended to these Robert and Osbert who now demand as sons and heirs, because the tenements are partible between heirs male etc. And as to this they produce suit etc.

And Robert Braythe and Edene come by Richard of Bolingbroke, their attorney, and defend their right when etc. And they say that they ought not to answer them in this matter to a count like this, for they say that whereas the said Robert and Osbert assert by their count that the fee of the said tenements descended from the said Sarah, grandmother etc., to the said Samuel only, as son etc., the said Sarah had four sons, to wit, one Simon, Robert, Ralph, and the said Samuel, and that Simon died without (heir of his body) etc.; and from the said Robert there issued one Gilbert and from that Gilbert there issued one Robert, Alan and Simon, etc. And from the said Ralph there issued one Robert, and from that Robert there issued one Alice and Beatrice, and those Alice and Beatrice, together with the said Robert the son of Gilbert, Alan and Simon, brothers of the said Robert, are



**Note from the Record**—*continued.*

etc Et petunt iudicium si predictus Robertus et Osbertus sine predictis Roberto filio Gilberti et aliis responderi debeant etc.

Et Robertus filius Samuelis et Osbertus dicunt quod ipsi per hoc precludi non debent ab accione sua etc Dicunt enim quod in predicta villa de Marum talis est consuetudo de huiusmodi tenementis partibilibus etc quod cum mulier aliqua cui hereditas descenderit. habuerit duos viros et vtrique viri (*sic*) procreauerint exitus etc, masculi procreati per primum virum post mortem huiusmodi mulieris possidebunt hereditatem etc. Ita quod illi procreati per secundum virum nichil habebunt etc. Et dicunt quod predicta Sarra auia etc habuit duos viros scilicet quosdam Ricardum primum virum etc et Robertum qui fuit secundus etc Et dicunt quod ipsi sunt filii predicti Samuelis filii predictae Sarre de primo viro procreati Et petunt iudicium etc.

Postea datus est eis dies hic in crastino Purificacionis beate Marie prece parcium etc.

Postea ad diem illum veniunt partes per attornatos suos etc. Et quesitum est per Iusticiarios a prefatis Roberto et Osberto. si consuetudo predicta, quam allegant, accidit vnquam inter aliquos heredes de sanguine suo etc. Dicunt quod casus huiusmodi hucusque non accidit inter aliquos de sanguine suo etc s(et) pretendunt verificare consuetudinem predictam, et casum multociens euenisse inter alios homines et eorum antecessores in villa predicta.

Dies datus est eis de audiendo Iudicio suo hic in Crastino sancti Iohannis Baptiste in eodem statu quo nunc etc.

Postea ad diem illum veniunt partes predictae per attornatos suos. Et datus est eis dies de audiendo iudicio suo hic in octabis sancti Martini in eodem statu quo prius etc.

Postea ad diem illum veniunt partes predictae per attornatos suos. Et datus est eis dies hic de audiendo iudicio suo a die Pasche in vnum mensem in statu quo prius etc.

Postea ad diem illum veniunt partes per attornatos suos. Et datus est eis dies hic a die sancti Michaelis in tres septimanas in statu quo prius etc.

Ad quem diem veniunt partes predictae per attornatos suos Et datus est dies hic in crastino Purificacionis beate Marie prece parcium etc.

Postea ad diem illum veniunt partes etc. Et datus est eis dies hic in Crastino sancti Iohannis Baptiste prece parcium sine esson(ia) etc.

Postea ad diem illum veniunt partes etc. Et datus est eis dies hic in Octabis sancti Martini prece parcium sine esson(ia) etc.

Postea ad diem illum veniunt partes etc Et datus est eis dies hic a die Pasche in vnum mensem in statu quo prius etc.

**Note from the Record**—*continued*.

still alive etc. And they pray judgment whether the said Robert and Osbert ought to be answered without the said Robert the son of Gilbert and the others etc.

And Robert the son of Samuel and Osbert say that they ought not thereby to be precluded from their action etc. For they say that in the said vill of Mareham there is as to partible tenements of this kind a custom that when a woman to whom an inheritance shall have descended shall have two husbands and both husbands shall have begotten issue etc., the males begotten by the first husband shall after the death of such woman possess the inheritance etc., so that those begotten by the second husband shall have nothing, etc. And they say that the said Sarah, the grandmother, etc., had two husbands, to wit, one Richard, the first husband etc., and Robert who was the second etc., and they say that they are the sons of the said Samuel son of the said Sarah begotten by the first husband. And they pray judgment etc.

Afterwards a day was given them here on the morrow of the Purification of Blessed Mary, upon request of the parties etc.

Afterwards on that day there came the parties by their attorneys etc., and the Justices asked the said Robert and Osbert whether the said custom which they allege did ever happen between any heirs of their blood etc. They say that a case like that has hitherto never happened between any (persons) of their blood etc., but they offer to aver the said custom, and that the case has happened numerous times between other men and their ancestors in the said vill.

A day was given them to hear their judgment here on (June 25) the morrow of S. John the Baptist in the same state in which now etc.

Afterwards on that day there came the said parties by their attorneys, and a day was given them to hear their judgment here on (November 18) the octave of Martinmas in the same state in which before etc.

Afterwards on that day there came the said parties by their attorneys, and a day was given them here to hear their judgment in one month from Easter in the state in which before etc.

Afterwards on that day there came the said parties by their attorneys, and a day was given them here (on October 20) in three weeks from Michaelmas in the state in which before etc.

On that day there came the said parties by their attorneys, and a day was given them here on (February 3) the morrow of the Purification of Blessed Mary upon request of the parties etc.

Afterwards on that day there came the parties etc. and a day was given them here on (June 25) the morrow of S. John the Baptist upon request of the parties without essoiners etc.

Afterwards on that day there came the parties etc., and a day was given them here on (November 18) the octaves of Martinmas upon request of the parties without essoiners etc.

Afterwards on that day there came the parties etc. And a day was given them here in one month from Easter in the state in which before etc.



61. LUCY v. PLUKENET.<sup>1</sup>I.<sup>2</sup>

## Cosinage.

William<sup>3</sup> Lucy porta soun bref de Cosynage vers Aleyn Plonkete<sup>4</sup> de la seisine <sup>5</sup>vn Elly aunc(estre)<sup>5</sup> descendant a Maud com a soer etc. de M a F. de F a <sup>6</sup>I de Iohan<sup>6</sup> a William<sup>7</sup> de William<sup>7</sup> a William qore demande etc.

*Ston.*<sup>8</sup> La ou vous auiet fet vostre descente de E<sup>9</sup> a Maude<sup>10</sup> de M. a F. com a fuitz la vous dioms nous qe E.<sup>9</sup> auoit vn soer L. par noun qi suruesquit E. et tendi estate de qy vous auetz fete omission <sup>11</sup>en vostre descente. iugement si a tiel counte respoundre deuoms.<sup>11</sup>

*Herle.* Asset nous suffit de fere nostre auncestre Cosine a nous et ceo auoms fait iugement etc.

Et fut ouste <sup>12</sup>de chalenger omissioun etc.<sup>12</sup>

*Ston.*<sup>13</sup> Apres la mort E<sup>9</sup> si<sup>14</sup> entreront Lesseybyne<sup>15</sup> et Maude com<sup>16</sup> soeres et heires<sup>17</sup> et departirent les tenementz entre eux et furent drein<sup>18</sup> seisiz. iugement du bref.

*Herle.* Si vous volez ceste excepcioun en sa nature vser com excepcioun de drein seisine mettez le<sup>14</sup> auant en forme de ley et dites. qe.<sup>3</sup> lur seisine pooms<sup>19</sup> auer bon bref ou autrement ele nest pas resonable.<sup>20</sup>

*Toud.* Apres la mort E. entreront <sup>21</sup>Lesselyne et Maud<sup>21</sup> et departyrent lez tenementz entre<sup>14</sup> eux.<sup>14</sup> et furent drein seisiz etc.

<sup>1</sup> Reported by *B, C, E, F, M, P, T, X* (twice). This is *Vulg. 1.* <sup>2</sup> From *T.* Compared with *C.* Rubric from *C.* No rubric in *T.* <sup>3</sup> *Add:* de *C.* <sup>4</sup> *Plokenet C.* <sup>5-5</sup> *vne Elyanore C.* <sup>6-6</sup> *Ion de I. C.* <sup>7</sup> *W. C.* <sup>8</sup> *Stonor C.* <sup>9</sup> *Elyanor C.* <sup>10</sup> *M: cum a soer C.* <sup>11-11</sup> *iugement de vostre descente C.* <sup>12-12</sup> *del chalange C.* <sup>13</sup> *Scrop C.* <sup>14</sup> *Om. C.* <sup>15</sup> *Lesselyne C.* <sup>16</sup> *Add: ii. C.* <sup>17</sup> *vn heir C.* <sup>18</sup> *donke C.* <sup>19</sup> *pus C.* <sup>20</sup> *receyuable etc. C.* <sup>21-21</sup> *ij. seores .L. et M. etc. C.*

61. LUCY *v.* PLUKENET.

## I.

## Cosinage.

William of Lucy<sup>1</sup> brought his writ of cosinage against Alan Plukenet<sup>2</sup> on the seisin of one Eleanor<sup>3</sup> ancestress descending to Maud as to sister etc., from Maud to F.,<sup>3</sup> from F. to John, from John to William, from William<sup>3</sup> to William who now demands etc.

*Stonore.* Whereas you have made your descent from Eleanor to Maud, from Maud to F. as to son, we tell you that Eleanor had a sister, L. by name, who survived Eleanor and tendered estate, and you have made omission of her in your descent. Judgment whether we ought to answer to such a count.

*Herle.* It is quite sufficient for us to make our ancestress cousin to us, and this we have done. Judgment.

And he was ousted from the challenge of the omission etc.

*Stonore.* After the death of Eleanor there entered Asceline and Maud as sisters and heirs and parted the tenements between themselves, and were last seised. Judgment of the writ.

*Herle.* If you want to use this exception according to its nature, as exception of last seisin, put it forward in the form (prescribed by) the law and say that on their seisin we can have a good writ ; or else (the exception) is not receivable.

*Toudeby.* After the death of Eleanor there entered Asceline and Maud and parted the tenements between themselves and were last

<sup>1</sup> William of Lucy was keeper of the peace in Warwickshire in 1320 (*Cal. Pat.* 1317-21, p. 462) and commissioner of array in the same county from 1322-26 (*ibid.* 1321-24, pp. 124, 274 ; 1324-27, pp. 54, 223). He was in the Scottish Marches with Peter de Montfort in 1322, and went to Gascony on the King's service in 1323 (*ibid.* pp. 67, 338). In 1322 and 1323 he was a commissioner of oyer and terminer (*ibid.* pp. 172, 370, 377).

<sup>2</sup> Alan Plukenet was keeper of the King's hay of Hereford 1308-15 (*Cal. Close* 1307-13, pp. 32, 299 ; 1313-18, p. 165). In 1313 he was granted letters of protection till the following Easter in order to make a pilgrimage beyond the sea (*Cal. Pat.* 1313-17, p. 18), and he

afterwards obtained further protection by asserting that he would set out for Scotland to stay there in the King's service. This, however, was withdrawn in 1318, on the ground that he had stayed at home, and the justices were ordered to proceed with the suits against him (*Cal. Close* 1313-18, p. 555). He died September 10, 1325, leaving as his heir his sister Joan de Bohun ; his wife Sibyl survived him (*ibid.* 1324-1327, pp. 408, 409 ; *Cal. inq. p.m.* vi, no. 687).

<sup>3</sup> We leave these names because of the characteristic confusion. The reporter or the copyist has added one name which makes the chain, as compared with the Record, too long.



<sup>1</sup>et cest vn bref de possession et voet estre porte<sup>1</sup> <sup>1</sup>de la seisine le drein seisi<sup>1</sup> et vous poez auer bon bref de lour seisine iugement du bref.

*Herle.* <sup>2</sup>Elly aunc(estre)<sup>2</sup> suruesquit L. et Maude<sup>3</sup> et murrust drein seisie prest etc.

*Et alii econtra.*

## II.<sup>4</sup>

William Lucy porta bref de cosinage vers Alein plokennette de la seisine vne Elienore descendant a Maude com a soer et de M a I. com a fiz de I. a W. qi demande com a fiz.

*Ston.* Apres la mort Elienore entrerent Maude et Asseline com soers et heirs et il ad fet omission de Asseline iugement dela descente.

*Herle.* Cest excepcion est ala drein seisine et nent ala descente.

*Ston.* Apres la mort Elienore entrerent M. et A. com soers et heirs et seisis furent iugement du bref.

*Herle.* Elienore suruesqi M. et A. prest etc.

*Alii econtra.*

## III.<sup>5</sup>

Cosinage ou le demandant sit<sup>6</sup> omissio de vno A en conte contant et fut chalenge par le tenant *hoc non obstante* le conte fut agarde bon par *Berr.* etc.

Williem de Luci porta soun bref de cusinage vers sire Aleine Plukenet et conta de la seiseine Elianore sa Cusine descendant amat(ilde) cum a seor et heir de Maud a Iohan com a fiz. de Iohan a Williem com afiz et heir qe ore demande.

*Stonore.* Apres la mort E.<sup>7</sup> et (*sic*) de qi seisine uous auez counte si entra vne Maude et Asceline com heir Elianore. et nous nauez mie fet mencion de A en vostre descente en conte contaunt iugement de vostre counte.

*Herle.* Assez moy suffit de fere moy cosyn a cely de qi seisine nous demandoms sanz fere mensioun de Asceline. et cel auoms fet en conte contaunt iugement si nostre conte etc. E dautre part si uous volez dire qe Asceline et Maude entrerent pus la mort E com heirs E et seisi furent la gist lexcepcioun de dreyn seisine et non pas omissioun du saunk dount si volez vser lexcepcioun de drein seisine vsez la en due forme.

*Berr.* agarde le conte bon nient contre esteaunt lur chalenge.

<sup>1-1</sup> *Om. C.*    <sup>2-2</sup> *E. C.*    <sup>3</sup> *M. C.*    <sup>4</sup> From X (first version).    <sup>5</sup> From P.  
<sup>6</sup> *Corr. fit.*    <sup>7</sup> Interlined.

seised etc., and this is a possessory writ and must be brought on the seisin of him who was last seised and you can have a good writ on their seisin. Judgment of the writ.

*Herle.* Eleanor, ancestress, survived Asceline and Maud and died last seised. Ready etc.

Issue joined.

## II.

William Lucy brought a writ of cosinage against Alan Plukenet on the seisin of one Eleanor, descending to Maud as sister and from Maud to J. as son, from J. to William who now demands as son.

*Stonore.* After the death of Eleanor there entered Maud and Asceline as sisters and heirs and he made omission of Asceline. Judgment of the descent.

*Herle.* This exception is to the last seisin and not to the descent.

*Stonore.* After the death of Eleanor there entered Maud and Asceline as heirs and were seised. Judgment of the writ.

*Herle.* Eleanor survived Maud and Asceline. Ready etc.

Issue joined.

## III.

Cosinage where the demandant in counting the count made omission of one A and this was challenged by the tenant. This notwithstanding the count was awarded good by BEREฟอร์ด C.J. etc.

William of Lucy brought his writ of cosinage against Sir Alan Plukenet and counted of the seisin of Eleanor, his cousin, descending to Maud as sister and heir, from Maud to John as son, from John to William as son and heir, who now demands.

*Stonore.* After the death of Eleanor of whose seisin you counted there entered one Maud and Asceline as heir of Eleanor, and you did not make mention of Asceline in your descent, in counting the count. Judgment of your count.

*Herle.* It is quite sufficient for me to make myself cousin to her on whose seisin we demand, without making mention of Asceline, and this we have done in counting our count. Judgment whether our count etc. And on the other hand if you want to say that Asceline and Maud entered after the death of Eleanor as heirs of Eleanor and were seised, (in such a case) there lies the exception of last seisin and not (the exception of) the omission of blood. Therefore if you want to use the exception of last seisin, use it in due form.

BEREฟอร์ด C.J. awarded their count good, notwithstanding their challenge.



Inquisicio

*Toud.* Nous vous dioms qe mesme cely Maude encemblement entr(a) etc apres la mort Elianore de qe seisine uous auez conte. com seors et heirs et cest vn bref de possessioun et doit estre porte de drein seisine du sanke. iugement du bref.

*Herle.* Elianore suruesquit Maud et Asceline prest etc.

*Et Alii econtra.*

*Ideo etc.*

IV.<sup>1</sup>

Nota qe la ou vn hom porta vn bref de cosinage vers Aleyn Plokenette et prist son titil de la seisine vne A. de A. pur ceo qele morust saunz heir de son corps. a Malde come a. seore et puis outre la desc(ente) le count fu chalenge en la descente qe la ou il auoit fait la descente de A. a Malde com a seore qele auoit vne altre seore Asseline par noun qe tendist estat et suruesqui .A. de qy il auoit fet omission en la descente et demand(e) iugement.

Le conte et la descente furent agardez bons. pur ceo qe cel fu vn bref de cosinage ou asseth(e) suffit de faire luy cosin.

Mes altre serreit en vn bref de droit.

V.<sup>2</sup>

Cosynage<sup>3</sup> ou la decente fut chalenge pur ceo qe il avoit fet omission de vne Maude en la dessente qe suruesquit.<sup>3</sup>

Vn William<sup>4</sup> de Lucy<sup>4</sup> porta son bref de Cosynage vers Labbe de Plumstoke<sup>5</sup> et counta de la seisine Alyanore<sup>6</sup> sa cosyne et fist sa descente de A. pur ceo qele morust etc. et<sup>7</sup> a sarre com a soer etc et puy ly fist cosyne etc.

*Staunt.*<sup>8</sup> A auoit vne soer Maude qe suruesquit et tendist estat etc. a qi le fee descendist auxi auant com a sarre de qi il ad fait omission en sa descente iugement.

*Herle.* Nous sumes en vn bref de possessioun ou si nous nous puyssoms faire cosin assez nous suffit. Et pur ceo dites autre chose qe ceo nest qe tryffle.

Et a ceo acordent<sup>9</sup> les Iustices qe ceo ne serroit pas al abatement de counte mesqe issint eust este.

*Ston.* <sup>10</sup>Après la mort<sup>10</sup> A. S.<sup>11</sup> et M. <sup>12</sup>partirent cest terre<sup>12</sup> entre eux issint qe Maude fust seisi<sup>13</sup> <sup>14</sup>iugement de puy qe etc.<sup>14</sup>

<sup>1</sup> From *E.*    <sup>2</sup> From *B.*    Compared with *F, M.*    <sup>3-3</sup> ou omission de cele qe atendit estat fut chalenge *F.*    *Om. M.*    <sup>4-4</sup> Leucy *M.*    <sup>5</sup> *P. F, M.*    <sup>6</sup> Alienore *F.* Elianore *M.*    <sup>7</sup> *Om. F, M.*    <sup>8</sup> Ston(or)e *F.*    <sup>9</sup> acorderunt *F, M.* <sup>10-10</sup> *Om. F.*    <sup>11</sup> *M. M.*    <sup>12-12</sup> entrèrent et parterent ceste terre *F.*    entrèrent en ceste terre et partirent *M.*    <sup>13</sup> *Add:* oue Sare etc. *M.*    <sup>14-14</sup> *Om. M.*

*Toudeby.* We tell you that this same Maud together (etc.) entered etc. after the death of Eleanor of whose seisin you counted, as sisters and heirs, and this is a possessory writ and must be brought on the last seisin of the (same) blood. Judgment of the writ. Inquisition.

*Herle.* Eleanor survived Maud and Asceline. Ready etc.

Issue joined.

Therefore etc.

#### IV.

Note that a man brought a writ of cosinage against Alan Plukenet and took his title on the seisin of one Eleanor, from Eleanor because she died without heir of her body to Maud as to a sister and then (traced) the descent further. The count was challenged as to the descent because he had traced the descent from Eleanor to Maud as to a sister, whereas she had another sister, Asceline by name, who tendered the estate and survived Eleanor, and of whom he had made omission in the descent. And he prayed judgment.

The count and the descent were awarded good, because that was a writ of cosinage where it is quite sufficient for him to make her a cousin.

But it would be otherwise in a writ of right.

#### V.

Cosinage, where the descent was challenged because he had made in the descent omission of one Maud who survived.

One William of Lucy brought his writ of cosinage against the <sup>1</sup>Abbot of Plumstoke<sup>1</sup> and counted of the seisin of Eleanor his cousin, and traced the descent from Eleanor because she died etc. to Maud as to a sister etc. and then made her (Eleanor) his cousin etc.

*Stonore.*<sup>2</sup> Eleanor had a sister, Asceline, who survived and tendered estate etc., (and) to whom the fee descended as much as to Maud, and he has made omission of her in his descent. Judgment.

*Herle.* We are in a possessory writ in which it is quite sufficient for us if we can make ourselves a cousin. And therefore say something else for this is only a trifle.

And the JUSTICES agreed<sup>3</sup> with this, for even if it had been so, that would not go to the abatement of the count.

*Stonore.* After the death of Eleanor Asceline and Maud parted this land between themselves so that Asceline was seised. Judgment since etc.

<sup>1</sup>— Note the confusion.

<sup>2</sup> Supplied from *F*.

<sup>3</sup> Supplied from *F*, *M*.



<sup>1</sup>*Herle.* A quel affecte pernez vous cel excepcion. ou pur bref abbatre ou pur Counte.

*Toud.* Maude entra etc. et fust seisi et Sarre etc.<sup>1</sup> et cest vn bref de possessioun qe veot estre porte de la mort le dreyn seisi iugement etc.

<sup>2</sup>A souruesquist les altres prest etc.<sup>3</sup>

## VI.<sup>4</sup>

### Cosinage.

Will. de Lucy porta bref de Cosinage vers Labbe de P countant de la seisine vne Elianore fesant decente a Sare com a soer et de Sare <sup>5</sup>a R et de R<sup>5</sup> al demandant.

*Ston.* El(ianore) auoit ij soers Sare et Maude qe entrerent com heirs El(ianore) et departirent ces tenemenz Iugement de bref.

*Herle.* El(ianore) suruesquit S. et M. prest etc.

<sup>†</sup> *Alii econtra.*

### Notes from the Record.

#### I.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 231 recto. Gloucestershire.  
Written by Burnedisshe.

Willelmus de Lucy petit uersus Alanum Plukenet vnum mesuagium vnam carucatam terre quinque acras prati septem acras pasture sex acras bosci et terciam partem duarum parcium duorum molendinorum cum pertinentiis in Fromptone Cotele De quibus Alianora Cotele consanguinea predicti Willelmi cuius heres ipse est fuit seisita in dominico suo vt de feodo <sup>5</sup>die quo obiit etc Et vnde idem Willelmus dicit quod predicta Alianora consanguinea etc fuit seisita de predictis tenementis in dominico suo etc<sup>5</sup> tempore pacis tempore domini H regis aui domini Regis nunc capiendū inde expletas ad valenciam etc <sup>5</sup>Et inde obiit seisita<sup>5</sup> Et de ipsa Alianora quia obiit sine herede de se descendit feodum etc cuidam Matill(idi) vt sorori et heredi etc Et de ipsa Matill(ide) descendit feodum etc cuidam Willelmo vt filio et heredi. Et de ipso Willelmo descendit feodum etc cuidam Fulconi vt filio et heredi etc Et de ipso Fulcone descendit feodum etc isti Willelmo qui nunc petit vt filio et heredi etc Et inde producit sectam etc.

<sup>1-1</sup> *Om. M.*    <sup>2</sup> *Suppl. Herle. F, M.*    <sup>3</sup> *Add: et alii econtra F, M.*    <sup>4</sup> *From X (second version).*    <sup>5-5</sup> *Interlined.*

*Herle.* To what effect do you take this exception? to abate the writ or the count?

*Toudeby.* Maud entered etc., and was seised, and Asceline etc. and this is a possessory writ which must be brought on the death of the one last seised. Judgment etc.

*Herle.*<sup>1</sup> Eleanor survived the others. Ready etc.

## VI.

### Cosinage.

William of Lucy brought a writ of cosinage against the Abbot of P.<sup>2</sup> counting of the seisin of one Eleanor, and tracing the descent to Maud as sister and from Maud to R. and from R. to the demandant.

*Stonore.* Eleanor had two sisters, Asceline and Maud, who entered as heirs of Eleanor and parted these tenements. Judgment of the writ.

*Herle.* Eleanor survived Asceline and Maud. Ready etc.

Issue joined.

### Notes from the Record.

#### I.<sup>3</sup>

De Banco Roll 195a, Mich. 6 Edw. II., membr. 231 recto. Gloucestershire.  
Written by Burnedisshe.

William of Lucy demands against Alan Plukenet one messuage, one carucate of land, five acres of meadow, seven acres of pasture, six acres of wood, and one third part of two parts of two mills with the appurtenances in Frampton Cotterell of which Eleanor Cotele cousin of the said William whose heir he is was seised in her demesne as of fee on the day on which she died etc. And concerning this matter the said William says that the said Eleanor, cousin etc. was seised of the said tenements in her demesne etc. in time of peace in the time of Lord Henry the King grandfather of our Lord the present King, taking thereof the esplees to the value etc., and died seised thereof, and from that Eleanor because she died without heir of her body, the fee etc. descended to one Maud as sister and heir etc., and from that Maud the fee etc. descended to one William as son and heir, and from that William the fee etc. descended to one Fulk as son and heir etc. And from the said Fulk the fee etc. descended to this William who now demands as son and heir etc. And as to this he produces suit etc.

<sup>1</sup> Supplied from *F*, *M*.

<sup>2</sup> Cp. above, p. 208, n. 1.

<sup>3</sup> Of the two entries on the roll only the one which we reproduce as I. seems

to bear directly on our case, but the two are so closely related that we have thought it worth while to reproduce both Records.



Notes from the Record—*continued*.

Et Alanus per Rogerum de Walingtone attornatum suum venit Et defendit Ius suum qu(ando) etc. Et dicit quod non debet eidem Willelmo ad hoc breue respondere Quia dicit quod istud breue de consanguinitate est quoddam breue possessorium quod h(ab)et ferri de seisina antecessoris vltimi (*sic*) seisiti etc Et dicit quod post mortem predictae Alianore consanguinee etc quedam Matill(is) et Ascelina sorores eiusdem Alianore intraverunt in predictis tenementis vt sorores et heredes etc Et inde fuerunt seisiti (*sic*) etc. De qua seisina predictus Willelmus breue suum impetrasse potuit si etc Et hoc paratus est verificare etc vnde petit iudicium etc.

Et Willelmus dicit quod predictus Alanus breue suum cassare non potest in hac parte etc. Quia dicit quod cum predictus Alanus asserat predictas Matill(idem) et Ascelinam supervixisse predictam Alianoram et intrasse in predictis tenementis etc. Eodem Matill(is) et Ascelina obierunt vivente predicta Alianora Et hoc petit quod inquiratur per patriam.

Et Alanus similiter.

Ideo preceptum est vicecomiti quod venire faciat hic a die Pasche in tres septimanas xii etc per quos etc. Et qui nec etc ad recognoscendum etc Quia tam etc.

## II.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 231 recto. Gloucestershire.  
Written by Burnedisshe.

Willelmus de Lucy petit uersus Alanum Plukenet vnum mesuagium vnam carucatam terre quinque acras prati septem acras pasture sex acras bosci et terciam partem duarum parcium duorum molendinorum cum pertinenciis in Fromptone Cotele De quibus Ascelina Cotele consanguinea predicti Willelmi cuius heres ipse est fuit seisita in dominico suo vt de feodo die quo obiit etc. Et vnde Willelmus dicit quod predicta Ascelina consanguinea etc. fuit seisita de predictis tenementis in dominico suo ut de feodo tempore pacis tempore domini H Regis aui domini Regis nunc Capiendo inde expletas ad valenciam etc <sup>1</sup>Et inde obiit seisita etc<sup>1</sup> Et de ipsa Ascelina quia obiit sine herede de se descendit feodum etc. cuidam Matill(idi) vt sorori et heredi etc Et de ipsa Matill(ide) descendit feodum etc cuidam Willelmo ut filio et heredi etc Et de ipso Willelmo descendit feodum etc cuidam Fulconi vt filio et heredi etc Et de ipso Fulcone descendit feodum etc. isti Willelmo qui nunc petit ut filio et heredi etc Et inde producit sectam etc.

<sup>1-1</sup> Interlined.

**Notes from the Record—continued.**

And Alan comes by Roger of Walingtone, his attorney, and defends his right when etc., and he says that he ought not to answer the said William to this writ, for he says that this writ of cosinage is a possessory writ which has to be brought on the seisin of the ancestor last seised etc. And he says that after the death of the said Eleanor cousin etc., one Maud and Asceline,<sup>1</sup> sisters of the said Eleanor, entered the said tenements as sisters and heirs etc., and were seised thereof etc. and on that seisin the said William could have obtained his writ if etc. And this he is ready to aver etc., and as to this he prays judgment etc.

And William says that the said Alan cannot quash his writ in this respect etc., for he says that whereas the said Alan asserts that the said Maud and Asceline survived the said Eleanor and entered the said tenements, the said Maud and Asceline died in the lifetime of the said Eleanor. And he prays that this be inquired by the country.

And Alan likewise.

Therefore the sheriff was commanded that he cause to come here in three weeks from Easter twelve etc. by whom etc. and who are neither etc. to find etc. because both etc.

**II.<sup>2</sup>**

**De Banco Roll 195a, Mich. 6 Edw. II., membr. 231 recto. Gloucestershire.  
Written by Burnedisshe.**

William of Lucy demands against Alan Plukenet one messuage, one carucate of land, five acres of meadow, seven acres of pasture, six acres of wood, and one third part of two parts of two mills with the appurtenances in Frampton Cotterell of which Asceline Cotele cousin of the said William whose heir he is was seised in her demesne as of fee on the day on which she died etc. And concerning this matter William says that the said Asceline cousin etc. was seised of the said tenements in her demesne as of fee in time of peace in the time of Lord Henry the King grandfather of our Lord the present King, taking thereof the esplees to the value etc., and died seised thereof etc. And from that Asceline because she died without heir of her body the fee etc. descended to one Maud as to the sister and heir etc. And from that Maud the fee etc. descended to one William as son and heir etc. And from that William the fee etc. descended to one Fulk as son and heir etc. And from that Fulk the fee etc. descended to this William who now demands, as son and heir etc. And as to this he produces suit etc.

<sup>1</sup> This is the same Asceline on whose seisin the writ mentioned in Record II. was brought.

<sup>2</sup> Though this case does not seem directly connected with that mentioned in the Report, it is apt to throw some light on the family history of those concerned. The property of Maud, Asceline and Eleanor was apparently divided

between them equally, and William now demands all that belonged both to Eleanor and to Asceline. In the case set out below Alan claims that Asceline was not seised at the time of her death of her share, yet in the preceding case he claims that she had entered (together with Maud) the share of Eleanor.



**Notes from the Record—continued.**

Et Alanus per Rogerum de Walingtone attornatum suum venit Et defendit Ius suum qu(ando) etc Et bene defendit quod predicta Ascelina consanguinea etc non obiit seisita de predictis tenementis sicut predictus Willelmus per breue suum supponit Et de hoc ponit se super patriam.

Et Willelmus similiter.

Ideo preceptum est vicecomiti quod venire faciat hic a die Pasche intres (*sic*) septimanas xii etc per quos etc Et qui nec etc ad recognoscendum etc Quia tam etc.

62. TREMUR AND OTHERS *v.* GIFFARD.<sup>1</sup>I.<sup>2</sup>

Cosinage ou il fyt le resort tanqe al tresael.

Katerine lauerenz et Sumeld porterent bref de cosinage de vers vn Willem et demaunderent certeynz tenemenz dunt vn Symund lor Cosyn fut seisi en soun demesne le ior qil morust. Katerine ne suyst point et fut seuere. lauerenz et sumeld counterent de les ij parties et dyseynt qun Symund lor Cosin fut seisi dil ent(er) de S. pur ceo qil morust saunz heir de soun corps descendist a Maut(ilde) Agn(es) et Felice com a seors etc. de Maut(ilde) descendist le fee et le demesne de sa purpartie a Roger Petideqe cum a fytz etc. de Roger a Roger com a fitz de Roger a Kateryne qore ne suyt pas pur sa purpartie cum a fylle etc. De Agn(es) descendist le fee et le demesne de sa purpartie a vn Mich(el) de Tremur cum a fitz de M. a vn Osborn cum a fytz de O. a Ion cum a fytz de I. a lauer cum a fytz qore sut pur sa purpartie etc. De Felice descendist le fee et le demesne de sa purpartie a vn Sumeld cum a fylle de S. a symund cum a fytz de S. a Sumld qore sut pur sa purpartie cum a fille.

*Scrop.* Sire cest vn bref de possession et vous veyet ben coment y pernent lor title de la seisine vn Symund lor cosyn et dyunt qe de S. descendist etc. a M. A. et F. com a seors etc. et funt lor descende de A. lyneaument a Lauerenz la quele A. e(st) tresaele ou lauerenz nauereyt my bref de possession de la seisine A. iugement du bref.

<sup>1</sup> Reported by *B*, *C* (twice), *E* (twice), *M*, *P*, *T* (twice), *X*, *Z*. This is Vulg. 9.

<sup>2</sup> From *G*. Compared with *P*, which contains only the last part of the report, as shown by footnote 1, p. 212.

**Notes from the Record**—*continued*.

And Alan comes by Roger of Walingtone, his attorney, and defends his right when etc., and he entirely denies that the said Asceline cousin etc. died seised of the said tenements as the said William supposes by his writ. And as to this he puts himself upon the country.

And William likewise.

Therefore the sheriff was commanded that he cause to come here in three weeks from Easter twelve etc. by whom etc. and who are neither etc. to find etc. because both etc.

**62. TREMUR AND OTHERS v. GIFFARD.****I.**

Cosinage where he made the resort up to the great-great-grand-mother.

Catherine, Lawrence and Gunhild brought a writ of cosinage against one Nicolas and demanded certain tenements of which one Simon, their cousin, was seised in his demesne on the day on which he died. Catherine did not sue and was severed. Lawrence and Gunhild counted as to the two parts<sup>1</sup> and said that one Simon, their cousin, was seised of the whole ; from Simon because he died without heir of his body (it) descended to Maud, Agnes, and Felise, as to sisters etc. From Maud the fee and the demesne of her share descended to Roger Petideqe as son etc., from Roger to Roger as son, from Roger to Catherine who does not sue now for her share, as daughter etc. From Agnes the fee and the demesne of her share descended to one Michael of Tremur as son, from Michael to Osborn as son, from Osborn to John as son, from John to Lawrence, who now sues for his share, as son etc. From Felise the fee and the demesne of her share descended to one Gunhild<sup>2</sup> as daughter, from Gunhild to Simon as son, from Simon to Gunhild who now sues for her share, as daughter.

*Scrope.* Sir, this is a possessory writ and you see well how they take their title on the seisin of one Simon, their cousin, and say that from Simon there descended etc. to Maud, Agnes, and Felise, as sisters etc., and they trace their descent from Agnes lineally (in the direct line) to Lawrence, and that Agnes (was) great-great-grandmother (of Lawrence), so that Lawrence would not have a possessory writ on the seisin of Agnes. Judgment of the writ.

<sup>1</sup> That is, the shares of Lawrence and Gunhild.

<sup>2</sup> This ancestress does not occur in the Record, and may therefore be considered an addition of the reporter or of the copyist. Apart from this detail,

and from the fact that the defendant Nicolas is called William, the Report is remarkably accurate as to the names: the omission of the husband of Gunhild among the plaintiffs may have been due to a wish to simplify the facts.



<sup>1</sup>*Herle ad*<sup>2</sup>*idem*<sup>2</sup>. La possession ne<sup>2</sup> passe nent<sup>3</sup> le quarte degree. Mes A. est en le quynte degre<sup>4</sup> par quei etc.

*Berr.* La cause pur quei homme ne put nent <sup>5</sup>prendre title en<sup>5</sup> bref de possession de la seisine le Tresael ceo<sup>2</sup> est pur ceo. qil nad nul bref de possession en le cas. mes cesti<sup>6</sup> bref est vn <sup>6</sup>bref de cosinage. ou<sup>7</sup> vous<sup>8</sup> poet prendre vostre<sup>9</sup> title auxi<sup>10</sup> haut cum vous<sup>11</sup> volet.<sup>12</sup> issint qe vous <sup>13</sup>vous pusset fere<sup>13</sup> cosyn a cely de qy vous pernet vostre title. par quei nous tenoms ceo bref asset bon.

*Pass.* Dauyd de Flepwyç fut en mesme le cas. ou le bref fut agarde bon.

*Scrop* <sup>14</sup>respondist outre. et dyt. qe<sup>14</sup> lor cosyn ne morust pas seisi prest etc.

*Et alii econtra.*

## II.<sup>15</sup>

### Cosinage.

Vne Gouneld et A sa parcenere porterent vn bref de cosinage vers Nich(ol) Giffard et E. sa femme et pristrent lur titil de la seisine vn Sym(ound) et de Sym(ound) pur ceo etc descendist le fee et le demesne a Felice et a Agneis com a deus seors et a vn H. de Felice etc. a Walter com a fitz etc de Walter a Willeme com a fitz etc. de Willeme a Gounelde qe ore demaunde ensemblement od sa parcenere com a file de Agneys a Willeme com a fitz de W. a Robert com a fitz de R. a Gilbert com a fitz de G. a ceste qe ore demaunde com a file ensemblement etc.

*Scrop* rehersa la descente et dist qil ne duseient a cesti bref estre receu. qe bien auetz entendu coment il ount pris lur titil de la seisine Sym(ound) qest frere le tresael. Alice qe porta cel bref et bref de cosinage est vn bref de possession et veot estre porte deynz la possession et le tresael est hor de la possession iugement si a cesti bref etc.

*Wesc.* En vn bref de mordauncestre de la mort mon pere ieo ioyndrey mon parcenier od moi en le bref a qy mon pere est ael et aueroms bien recouerer auxi par de sa.

<sup>1</sup> Here begins the report in *P.* At the outset we find: Cosinage. Bref de Cosinage fut porte de la mort et la seisine le frere le tresael. <sup>2</sup> *Om. P.* <sup>3</sup> pas *P.* <sup>4</sup> *Add:* de l. *P.* <sup>5-5</sup> auer *P.* <sup>6-6</sup> en cesti *P.* <sup>7</sup> *Om. P.* <sup>8</sup> home *P.* <sup>9</sup> soun *P.* <sup>10</sup> altre si *P.* <sup>11</sup> il *P.* <sup>12</sup> veult *P.* <sup>13-13</sup> facez vous mesme *P.* <sup>14-14</sup> *Om. P.* <sup>15</sup> From *E* (first version).

*Herle* (to the same purpose). The (writ of) possession does not pass the fourth degree, but Agnes is (ancestress) in the fifth degree. Therefore etc.

BEREFORD C.J. The reason why one cannot take one's title in a possessory writ on the seisin of a great-great-grandfather<sup>1</sup> is that there is no possessory writ in the case, but this is a writ of cosinage in which you can take your title as high<sup>2</sup> as you want to, as long as you can make yourself cousin to him from whom you take your title. Therefore we hold this writ good enough.

*Passeley*. David of Fleetwick's case was just the same,<sup>3</sup> and the writ there was awarded good.

*Scrope* answered over and said that their cousin had not died seised. Ready etc.

Issue joined.

## II.<sup>4</sup>

### Cosinage.

One Gunhild and Lawrence, her parcener, brought a writ of cosinage against Nicolas Giffard and Isabel his wife, and took their title on the seisin of one Simon and from Simon because etc. there descended the fee and the demesne to Felise and to Agnes as two sisters and to one heir. From Felise etc. to Walter as son etc., from Walter to William as son etc., from William to Gunhild who now demands together with her parcener, as daughter; from Agnes to William as son, from William to Robert as son, from Robert to Gilbert as son, from Gilbert to this (A.) who now demands as daughter, together etc.

*Scrope* rehearsed the descent and said that they ought not to be received to this writ. For you have well heard how they have taken their title on the seisin of Simon who is a brother of the great-great-grandmother of Alice who brought this writ, and a writ of cosinage is a possessory writ and must be brought within the (limits of) possession, and the great-great-grandfather<sup>5</sup> is beyond the (limits of) possession. Judgment whether to this writ etc.

*Wescote*. In a writ of mortdancestor on the death of my father I may join to myself in the writ my parcener to whom my father is grandfather, and we shall have recovery right enough. The same is true here.

<sup>1</sup> This relates, of course, also to a great-great-grandmother. *Ael* in mediæval French would be pronounced in the same way for both genders, and the difference in spelling might have been overlooked.

<sup>2</sup> *I.e.* as far back.

<sup>3</sup> *Or*: David of Fleetwick was in the

same case. Here is another case of referring to precedents, cp. above, p. 190.

<sup>4</sup> In this Report we leave the names unchanged, since otherwise the Report might lose its original character.

<sup>5</sup> This relates also to the great-great-grandmother, cp. above.



*Herle.* Ceo nest mye semblable qe la e(stes) vous eyde par statut cy e(stes) vous a la commune ley iugement si cesti bref igist desicom vous auetz fet la descent parmy Agn(es) qest tresael. et hor de la possession et qest plus proscheyn a vous en les desgrez qe nest Sym(ound) frere Agn(es) de quele Agn(es) si vous preissetz vostre titil. vostre bref de cosinage ne sereit pas meyntenable iugement si a cesti bref en quel bref vous auetz pris vostre titil de plus haut deuetz estre r(espondu).

*Ber.* De la seisine le cosin bref de cosinage git bien. ore pernent il lur titil de la seisine Sym(ound) frere le tresael qe naturellement est son cosin. par qey il semble qe le bref est assethe bon.

*Herle.* Sym(ound) ne morust pas seisi prest etc.

*Et alii contra.*

### III.<sup>1</sup>

Cosynage de la seisine le tresael et le bref fuist chalenge et agarde bon.

Treys parceners ensemblement oue le baron lun des parceners porterent lour bref de Cosinage vers un Richard et Isabelle sa femme de la mort vn Symond et la descente firent de Symond pur ceo qil morust saunz heir de sun corps a Alice Dyonise et Agnes de A.<sup>2</sup> descendist a I. de I. a William qi ne seut point qi seure sount par agard de A. a Thomas de Thomas<sup>2</sup> a Maude qi seust oue svn baron.

*Schar.*<sup>3</sup> Vous auez bien entendu coment il ount fait lour descente de A.<sup>4</sup> a Maud la ou A<sup>4</sup> est tresael a Maude et issint la descente hors de la nature du bref de possession iugement etc.

*Wesc.* <sup>5</sup>I. demande forsque de la seisine le frere sa besael ou bref de possession eit<sup>6</sup> lieu par qei duresse serroit sil feut chace a son bref de droit.

*Herle.* Si comande<sup>7</sup> feut a remander<sup>8</sup> de la seisine Agnes il coven-droit qele portast son bref de droit qar bref de possession ne ly serueroit pas par qei de puis qe ele est ore a demander de la seisine le frere Agnes et<sup>9</sup> descente par my Alice il semle qe le bref de possession ne ly deit valer.

<sup>1</sup> From *M.* Compared with *B.* Headnote from *B.* <sup>2-2</sup> a Thomas de *T.* a R. de R. *B.* <sup>3</sup> *Scrop B.* <sup>4</sup> *S. B.* <sup>5</sup> *Maud B.* <sup>6</sup> ad *B* (later correction). <sup>7</sup> Maude (correction) *B.* <sup>8</sup> demaunder *B* (later correction). <sup>9</sup> *Add: fer la* (interlined) *B.*

*Herle.* That is not a similar case, for there you are helped by statute,<sup>1</sup> here you are at the common law. Judgment whether this writ lies here since you have traced your descent through Agnes who is great-great-grandmother, and out of the (limits of) possession, and who is nearer to you in the degrees than is Simon the brother of Agnes. And if you took your title from that Agnes, your writ of cosinage would not be maintainable. Judgment whether you ought to be answered to this writ in which writ you have taken your title from higher up (farther away than Agnes).

BEREFORD C.J. The writ of cosinage well lies on the seisin of the cousin. Now, they take their title on the seisin of Simon, brother of the great-great-grandmother, who by the nature of things is her cousin. Therefore it seems that the writ is good enough.

*Herle.* Simon did not die seised. Ready etc.

Issue joined.

### III.

Cosinage on the seisin of the great-great-grandmother, and the writ was challenged and was awarded good.

Three parceners together with the husband of one of the parceners brought their writ of cosinage against one Richard and Isabel his wife, on the death of one Simon, and traced the descent from Simon because he had died without heir of his body to Alice, Denyse, and Agnes, from A. it descended to I., from I. to William who does not sue (they are severed by award), from A. to Thomas, from Thomas to Maud who sues together with her husband.

*Scrope.*<sup>2</sup> You have well heard how they traced their descent from A. to Maud, and A. is great-great-grandmother of Maud, and thus the descent is beyond the nature of a possessory writ. Judgment etc.

*Wescote.* I. demands only on the seisin of the brother of (her) great-grandfather, and in a case like that there is room for a possessory writ. Therefore it would be a hardship if he were driven to his writ of right.

*Herle.* If Maud were to demand<sup>3</sup> on the seisin of Agnes it would be necessary that she should bring her writ of right, for a possessory writ would not serve her. Therefore since she is now to demand on the seisin of the brother of Agnes and trace<sup>3</sup> the descent through Alice, it seems that a possessory writ ought not to be of value to her.

<sup>1</sup> Statute of Gloucester (6 Edw. I),  
c. 6.

<sup>3</sup> Supplied from *B*, where it is a  
later correction.

<sup>2</sup> Supplied from *B*



*Berr.* En auqun temps homme ne volleit<sup>1</sup> mye auer bref de besael<sup>2</sup> mes tauntsoulement bref de droit de sa seisine et si peut homme donques iatardeis auer bref de possession del<sup>3</sup> . . . le besael. scilicet bref de cosinage et feut la cause pur ceo qe bref de besael ne feut pas a cel temps ordne de <sup>4</sup>cel noun siwite<sup>4</sup> il <sup>5</sup>ne pount qil pout<sup>5</sup> auer eu bref de cosinage de puis qil est cosyn.

*Herle.* De puis qe M. ne pout auer bref de possession de la mort Agnes qest plus prochein il semle qe il ne peut auer bref de possession de la seisine cely qest de plus loyngtime saunk.

*Wesc.* Ieo puis auer bref de mortdancestor pur le fitz le frere mesque ill(y) svit<sup>6</sup> vn autre a demander oue ly etc. par qei a mout plus fort ieo auerai bref de Cosynagé etc.

*Herle.* Ceo est done par statute et vous estes apleder de la commune ley et vnqore couient il qe vous pledetz <sup>7</sup>par vne prise en baunk<sup>7</sup> en le cas qe vous auiez mys.

*Berr.* Sachietz qe nous ne volloms mye abatre le bref si vous ne peusset monstrar qil ne sount point cosyn.

*Scrop.* Il ne morust mye seisi en son demesne com de fee prest etc.

<sup>8</sup>*Et alii econtra etc.*<sup>8</sup>

#### IV.<sup>9</sup>

Cosinage <sup>10</sup>descente fet par mi tresael al vn des demaundauntz, ad idem T. 6. R. E. 3.<sup>10</sup>

Ion et Maude porterent bref de Cosinage de la seisine vn Symond fesaunt Descente a Agnes com a soer et de Agnes fesaunt diverses dec(entes) taunt qe ales demaundauntz.

*Scrop.* Vous supposez en votre dec(laracioun) Agnes estre tresaele a Maud de qi seisine Bref de possession ne gist mie. Iugement si par mi ly pusez descende fere.

<sup>1</sup> soleit *B.*    <sup>2</sup> possessioun del frere le Besaele scilicet bref de Cosynage et fust la cause pur ceo qe bref ne gust pas de Besaele *B.*    <sup>3</sup> Space left blank for one short word in *M.* frere *B.*    <sup>4-4</sup> ceo nensuyt *B.*    <sup>5-5</sup> point qil ne pout *B.*    <sup>6</sup> soit *B.*    <sup>7-7</sup> This is cancelled and instead of this is interlined: ala commune ley *B.*    <sup>8-8</sup> *Om. B.*    <sup>9</sup> From X.    <sup>10-10</sup> is added in different, clearer ink and in what appears to be a different writing.

BEREFORD C.J. At one time one would not have had a writ of besael, but only a writ of right on his seisin, and yet<sup>1</sup> one could then<sup>2</sup> have a possessory writ on (the seisin of)<sup>3</sup> the brother<sup>4</sup> of the great-grandfather, namely, a writ of cosinage, and the reason was that at that time the writ of besael had not been created. From this<sup>5</sup> it does not follow at all<sup>5</sup> that they cannot have a writ of cosinage, since he is cousin.

*Herle.* Since M. could not have had a possessory writ on the death of Agnes who is nearer, it seems that he cannot have a possessory writ on the seisin of one who is of more distant blood.

*Wescote.* I can have a writ of mortdancestor for the son of the brother, even if there be<sup>6</sup> another to demand with him etc. Therefore *a multo fortiori* I shall have a writ of cosinage etc.

*Herle.* That<sup>7</sup> is given by statute,<sup>8</sup> and you are to plead at the common law, and yet in the case which you have put you must plead<sup>9</sup> by a taking in the Bench.<sup>9</sup>

BEREFORD C.J. Know that we will not abate the writ unless you can show that they are not cousins.

*Scrope.* He did not die seised in his demesne as of fee. Ready etc. Issue joined.

#### IV.

Cosinage; descent was traced through the great-great-grandmother to one of the demandants. To the same effect (a case in) Trinity Term 6 Edw. III.

John and Maude brought their writ of cosinage on the seisin of one Simon, tracing descent to Agnes as sister, and from Agnes tracing divers descents down to the demandants.

*Scrope.* You suppose in your declaration<sup>10</sup> that Agnes is great-great-grandmother of Maud, and on the seisin of a great-great-grandmother there lies no possessory writ. Judgment whether you can trace descent through her.

<sup>1</sup> In the original: *iaturdeis*.

<sup>2</sup> In the original: *donques*.

<sup>3</sup> It is doubtful whether *de possession* relates to 'writ' (possessory writ) or to 'brother' (seisin of the brother). We have thought it best to extend the text in order to include both meanings.

<sup>4</sup> Supplied from *B*. The scribe of *M* apparently had doubts as to this word and left a blank space.

<sup>5-5</sup> Supplied from *B*. The scribe

of *M* has obviously misread or misunderstood.

<sup>6</sup> Supplied from *B*.

<sup>7</sup> Viz. the possibility of a stranger joining with the nephew in the writ of mortdancestor.

<sup>8</sup> Stat. Glouc. (6 Edw. I), c. 6.

<sup>9-9</sup> This passage seems a mystery. In *B* it is cancelled and instead of it is inserted: 'at the common law.'

<sup>10</sup> It is not certain that this should not read: descent.



*Wescote.* Agnes est Besael a Ion parcener Maude et Maud ne deit estre de pir condicioun qe Ion etc.

*Herle.* De pe(us) qe vous ne poez vser bref de possession de la seisine Agnes quest plv<sup>1</sup> prochain coment poez vser bref de possession de La seisine S(ymond) qi est plus longtein par vn degr(e) ?

*Berf.* En auncien temps hom ne pout pas auoir bref de possession de seisine de Besael et nepurquant homme pout auer a cel temps bref de cosinage de la seisine lefrere le Besael pur ceo qil est cosyn par qey si vous ne pusez mostre qe S(ymond) ne soit pas cosyn autrement nous agard(ons) qe vous respoignes.

*Scrop.* Il ne morust pas seisi en son demesne com de feo. prest.

*Et alii econtra.*

## V.<sup>2</sup>

<sup>3</sup>Nota cosinage.

Cosynage.<sup>3</sup> De Symond pur ceo etc. descendist<sup>4</sup> a Agn(es) Alice et Ione cum a iij. seors <sup>5</sup>et vn heir.<sup>5</sup> de Agnes etc de sa purpartie a B. de B. a C. de C. a<sup>6</sup> D. de D. a K<sup>7</sup> qe point ne sewit. De Alice etc. de sa purpartie a <sup>8</sup>I. de I. a G. De Ione etc. de sa purpartie a M. de M. a C. de C. a I. de I. a Laure etc.<sup>8</sup>

*Scrop.* La ou il<sup>9</sup> vnt fet lour descent de Symond a Agn(es) Alice et Ione. <sup>10</sup>cum a seores et heirs<sup>10</sup> de Agn(es) de sa purpartie. tanqe a Laure. issint par mye lour descent. il vnt fet Agnes Tresaele a Laure de qi seisine <sup>11</sup>il nad<sup>11</sup> bref de possession.<sup>12</sup>

*Pass.* Les autres parceners <sup>13</sup>sunt deynz lez degreez<sup>13</sup> qe pount auer bref de possessioun et deyuent attrere cely qe est en le plus loyntyme degree <sup>14</sup>par statut.<sup>14</sup>

*Scrop.* Lestatut vous donne le mordauncestre.

*Pass.* Le commune auncestre est auncestre<sup>15</sup> a touz.

*Berr.* Home ne put pas<sup>16</sup> auer bref de possessioun de la seisine le tresael, pur<sup>16</sup> ceo<sup>16</sup> qe ceo nest pas vncore ordeyne, et<sup>16</sup> pur ceo responez.

<sup>1</sup> is added in different, clearer ink and in what appears to be a different writing. <sup>2</sup> From *C* (first version). Compared with *T* (first version). <sup>3-3</sup> *Om. T.*  
<sup>4</sup> *Add:* le fee et le demesne *T.* <sup>5-5</sup> etc. *T.* <sup>6</sup> *Add:* E de E a *T.* <sup>7</sup> Laure *T.*  
<sup>8-8</sup> Iohan de Iohan a Thomas de Thomas a Willem de Willem a M. *T.*  
<sup>9</sup> *Add:* dit *T.* <sup>10-10</sup> *Om. T.* <sup>11-11</sup> Laure nauereit mye *T.* <sup>12</sup> *Add:* iugement etc. *T.* <sup>13-13</sup> ne sunt forsqe en la terce degree et *T.* <sup>14-14</sup> iugement etc. par statut etc. et par statut etc. *T.* <sup>15</sup> Cosyn *T.* <sup>16</sup> *Om. T.*

*Wescote.* Agnes is great-grandmother of John parcener of Maud, and Maud ought not to be in a worse position than John etc.

*Herle.* Since you cannot use a possessory writ on the seisin of Agnes who is nearer, how can you use a possessory writ on the seisin of Simon who is more distant by one degree?

BEREFORD C.J. In ancient time one could not have a possessory writ on the seisin of a great-grandfather and nevertheless one could at that time have a writ of cosinage on the seisin of the brother of the great-grandfather, because he is cousin. Therefore unless you can show that Simon is not cousin we award<sup>1</sup> that you answer.

*Scrope.* He did not die seised in his demesne as of fee. Ready.  
Issue joined.

## V.

### Note. Cosinage.

Cosinage. From Simon because etc. (it) descended to Agnes, Alice, and Joan as to three sisters and one heir, from Agnes etc. as to her share to B., from B. to C., from C. to D., from D. to K., who does not sue. From Alice etc. as to her share to I., from I. to G. From Joan as to her share to M., from M. to C., from C. to I., from I. to Laura etc.

*Scrope.* Whereas they trace their descent from Simon to Agnes, Alice, and Joan as sisters and heirs, (and) from Agnes as to her share to Laura, they thus by their descent make Agnes<sup>2</sup> great-great-grandmother of Laura, and as to the seisin of a great-great-grandmother there is no possessory writ.

*Passeley.* The other parceners are within the degrees so that they can have a possessory writ, and they ought to attract<sup>3</sup> according to the statute<sup>4</sup> one who is (related) in the more distant degree.

*Scrope.* The statute gives you the (writ of) mortdancestor.<sup>5</sup>

*Passeley.* The common ancestor is the ancestor of all.

BEREFORD C.J. One cannot have a possessory writ on the seisin of the great-great-grandfather because that is not yet introduced (by statute), and therefore answer.<sup>6</sup>

<sup>1</sup> Or perhaps: we shall award (*agardones* instead of *agardons*).

<sup>2</sup> According to the names mentioned by the reporter, he should have said 'Joan.'

<sup>3</sup> *attrere*—i.e. make it possible for the more distant relative to use the same right.

<sup>4</sup> Statute of Gloucester, c. 6.

<sup>5</sup> According to Versions II and III

the writ of mortdancestor was mentioned in a different connection, namely, to show that one could have even a mortdancestor, whereupon the other party retorted that that was given by statute.

<sup>6</sup> It would seem from the other versions that BEREFORD C.J. said more than this, namely, that in this case a possessory writ would lie, but that in



*Scrop.* Qe <sup>1</sup>le cosyn<sup>1</sup> ne murust pas seisi en son<sup>2</sup> demesne cum de fee prest etc.

*Et alii econtra.*

### VI.<sup>3</sup>

Nota<sup>4</sup> vn bref de Cosynage qe<sup>4</sup> fut porte de la seisine le frere le tresael et fut agarde qe le bref fut bon. *non obstante* qe le tenant dit qe le bref de possession ne git nent de la seisine le tresael par qei homme ne put pas counter par my le tresael en la possession.

<sup>5</sup>Et iij. foiz en ceo terme le bref agarde bon *in hoc casu*.<sup>5</sup>

### VII.<sup>6</sup>

Nota.

Nota qe vn hom porta vn bref de cosinage de la seisine le frere le Tresael et le bref chalenge pur ceo qe nul bref de possessioun gist de la seisine nul del saunk si haut. et *hoc non obstante* le bref fu agarde bon.

### VIII.<sup>7</sup>

Cosinage.

En vn bref de Cosinage. fut (*sic*) porte de la seisin le frere le Tresael et agarde bon *non obstante* qe chalenge fut qe bref de possession ne gist pas de la seisin le Tresael qil ni ad nul bref *vn(de) tractan* (?) etc *et hoc est*

<sup>1-1</sup> cesti *T.*    <sup>2</sup> sa seisine *T.*    <sup>3</sup> From *C* (second version). Compared with *T* (second version). It is possible that this version relates to another of the three cases mentioned in *C*.    <sup>4</sup> *Om. T.*    <sup>5-5</sup> et in hoc casu le bref etc. *T.*    <sup>6</sup> From *E* (second version). See note 3.    <sup>7</sup> From *Z*. This is immediately preceded by the following report, which we reproduce here since it suggests instructive analogies. It relates to a case which was probably discussed in another term of the same year.

Dael.

Deux porterent bref Dael et firent lour descente etc et par lour descente firent celui de qi seisin etc tresael et ael a lautre et fut le bref chalenge pur ceo qe bref de possession ne gist pas de la seisin le tresael et dit fut qe celui qest en plus lontisme degree doit estre attret acelui qest pluis prochein par statut et fut le bref meintenu

Et *tamen* statut ne parle forsqe il auerount le mord(auncestre) etc.

*Scrope.* Ready etc. that the cousin did not die seised in his demesne as of fee.

Issue joined.

## VI.

Note that a writ of cosinage was brought on the seisin of the brother of the great-great-grandmother and it was awarded that the writ was good, notwithstanding that the tenant said that a possessory writ does not lie on the seisin of the great-great-grandmother and that consequently one could not as to possession count through the great-great-grandmother.

And three times during this term has the writ been awarded good in cases like that.

## VII.

Note.

Note that one brought a writ of cosinage on the seisin of the brother of the great-great-grandmother and the writ was challenged because no possessory writ lies on the seisin of anybody of so remote blood. And this notwithstanding the writ was awarded good.

## VIII.

Cosinage.<sup>1</sup>

A writ of cosinage was brought on the seisin of the brother of the great-great-grandmother and was awarded good notwithstanding that it was challenged that a possessory writ does not lie on the seisin of the great-great-grandmother because there is no writ . . . etc. and this is true but the great-great-grandmother is not a cousin etc.,

the case of seisin of the great-great-grandfather it would not lie because it had not yet been 'ordained.' The statement as it appears in this version is correct so far as it goes, but if one were to base one's judgment on this version only the connection might be not very clear.

<sup>1</sup> This version is taken from Z; it is immediately preceded by the following report, which we reproduce here because it suggests instructive analogies (see note on the opposite page):—

Writ of ael.

Two brought a writ of ael and

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traced their descent etc., and in their (statement of) descent they made one whose seisin etc. great-great-grandfather (to one) and grandfather to the other. And the writ was challenged because a possessory writ does not lie on the seisin of the great-great-grandfather, and it was said that according to the statute one who is (related) in the more distant degree ought to be attracted (see above note 3, p. 215) by one who is nearer. And the writ was maintained.

And yet the statute only says that they shall have the (writ of) mortdancestor etc.



*verum* mes le Tresael nest pas cosin etc com est le frere le Tresael etc. *Et eadem ratione* bref de Tresael pust estre meintenu de la seisin celui qest paramount le Tresael et istis casibus homme put auer bref de Cosinage par lynial desc(ent) sanz resort et mesme la ley tient en bref dentre cosin en bref de possession.

*Tamen quere veritatem de hiis etc.*

#### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 100 recto. Cornwall.  
Written by Burnedissh.

Laurencius de Tremur et Iohannes de la Torre et Gumulda vxor (*sic*) per Nicholaum Talgullon attornatum suum petunt uersus Nicholaum Giffard et Isabellam vxorem eius duas partes vnus mesuagii et sex acr(arum) terre cum pertinenciis in Trefentewyn de quibus Simon le Botiller consanguineus predictorum Laurencii et Gumulde et cuiusdam Katherine que fuit vxor Roberti Giffard cuius heredes ipsi sunt fuit seisitus in dominico suo vt de feodo die quo obiit etc. Et vnde iidem Laurencius et alii dicunt quod predictus Simon consanguineus etc fuit seisitus de integro predictorum tenementorum in dominico suo vt de feodo tempore pacis tempore domini H Regis aui domini Regis nunc capiendo inde expletas etc ad valenciam etc Et inde obiit seisitus etc. Et de ipso Simone quia obiit sine herede de se descendit feodum etc quibusdam Matill(idi) Agneti et Felicie vt sororibus et heredi Et de ipsa Matill(ide) descendit feodum propartis sue cuidam Rogero vt filio et heredi etc. Et de ipso Rogero descendit feodum etc. cuidam Rogero ut filio et heredi etc. Et de ipso Rogero descendit feodum etc predictae Katherine que fuit vxor predicti Roberti que modo non sequitur vt filie et heredi. Et de predicta Agnete sorore media descendit feodum propartis sue cuidam Michaeli vt filio et heredi Et de ipso Michaeli descendit feodum etc. cuidam Osberto vt filio et heredi etc Et de ipso Osberto descendit feodum etc cuidam Iohanni vt filio et heredi Et de ipso Iohanne descendit feodum etc isti Laurencio qui nunc petit simul etc vt filio et heredi etc Et de predicta Felicia sorore postnata descendit feodum propartis sue cuidam Simoni vt filio et heredi etc Et de ipso Simone descendit feodum etc isti Gumulde que nunc petit simul etc vt filie et heredi etc. Et inde producunt sectam etc.

as is the brother of the great-great-grandmother etc. And for the same reason a writ of tresael can be maintained on the seisin of one who is paramount to the great-great-grandmother and in such cases one can have a writ of cosinage by lineal descent without resorting. And as to the writ of entry the same law holds good as to the possessory writ.

Yet *quaere* as to the truth of all this etc.

#### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 100 recto. Cornwall.  
Written by Burnedisshe.

Laurence of Tremur<sup>1</sup> and John de la Torre and Gunhild (his) wife, by Nicolas Talgullon, their attorney, demand against Nicolas Giffard and Isabel his wife two parts of one messuage and (of) six acres of land with the appurtenances in Trethevyn<sup>2</sup> of which Simon le Botiller (the Butler), cousin of the said Laurence, Gunhild, and of one Katherine wife that was of Robert Giffard, whose heirs they are, was seised in his demesne as of fee on the day on which he died etc. And concerning this matter the said Laurence and the others say that the said Simon, cousin etc., was seised of the whole of the said tenements in his demesne as of fee in time of peace in the time of Lord Henry the King grandfather of our Lord the present King, taking thereof the esplees etc. to the value etc. And he died seised thereof etc. And from that Simon because he died without an heir of his body the fee etc. descended to Maud, Agnes, and Felise, as to sisters and (one) heir, and from the said Maud the fee of her share descended to one Roger as son and heir etc., and from Roger the fee etc. descended to one Roger as son and heir etc. And from that Roger the fee etc. descended to the said Katherine wife that was of the said Roger, who does not sue now, as daughter and heir. And from the said Agnes, the middle sister, the fee of her share descended to one Michael, as son and heir, and from the said Michael the fee etc. descended to one Osbert as son and heir etc., and from that Osbert the fee etc. descended to one John as son and heir etc. And from that John the fee etc. descended to this Laurence who now demands together etc., as son and heir etc. And from the said Felise, the youngest sister, the fee of her share descended to one Simon as son and heir etc. And from that Simon the fee etc. descended to this Gunhild who now demands together etc., as daughter and heir etc. And as to this they produce suit etc.

<sup>1</sup> In 1318 Laurence of Tremur was pardoned for acquiring lands in Trelulla, Pellengaron and other places in Cornwall from Nicolas Giffard, tenant-in-chief (*Cal. Pat.* 1317-21, p. 150). These lands were held in socage of the King at the time of Laurence's death, before February 10, 1327 (*Cal. inq. p.m.* vii. 57); he held other lands in socage of

Stephen of Poddiford and Thomas de la Mettyn, but there is no mention of Trethevyn in the inquisition.

<sup>2</sup> Near Lannowmure in the parish of St. Kew, a manor held in 1302 by Robert and Katherine Giffard. Cf. Maclean, *Hist. of Trigg Minor*, ii, 117, 146.



**Note from the Record**—*continued.*

Et Nicholaus et Isabella per Elyam de sancto Maderno attornatum ipsius Isabelle veniunt Et predicta Isabella dicit quod ipsa nichil habet in predictis tenementis ad presens nisi vt vxor predicti Nicholai etc. Et Idem Nicholaus defendit Ius suum qu(od) etc Et bene defendit quod predictus Simon consanguineus etc non obiit seiscitus de predictis tenementis in dominico suo vt de feodo sicut predicti Laurencius et alii per breue suum supponunt Et de hoc ponit se super patriam.

Et Laurencius et alii similiter.

Ideo preceptum est vicecomiti quod venire faciat hic a die sancti Hillarii in xv dies etc xii etc per quos etc Et qui nec etc ad recognoscendum etc Quia tam etc.

63. TYCHEMERSHE *v.* DE LA MUSCHE.<sup>1</sup>I.<sup>2</sup>

## Cosinage.

Henri de Tichemesse et Ione sa femme porterent vn bref de cosinage vers Willeme de la Mouche des certeyns tenemenz et feseient lur descente de vne Iue pur ceo qil morust saunz heir de son corps. a W. com a frere de W etc.

*Herle.* La ou vous dites qe Iue morust saunz heir de son corps. apres la mort mesme cesti Iue W. vers qy cesti bref est porte entra come fuitz Iue et seisi est com heir iugement si accioun poetz auoir.

*Scrop.* Tant amount qe Iue ne morust pas saunz heir de son corps. nous voloms auerer qe si.

*Herle.* Vous auetz si W. qi vous dit qe il est fuitz Iue et seisi est come heir et si vous voletz graunter qil est fuitz Iue et neient heir mustrez le pur qey et nous vous respondrons.

*Scrop.* Il est le fuitz vn Thom(as) Thomue prest etc.

*Herle.* Le fuitz Iue tenu et conu prest etc.

*Scrop.* En la menere qe ieo ey tendu ma excepcion en mesme la manere deuetz respoudre. ore ey ieo dit simplement. qil est le fuitz. T. Thomue dount si vous deuetz estre al contraire si couent il a dire neient le fuitz T. Thomue eynz le fuitz Iue saunz plus dire iugement etc.

<sup>1</sup> Reported by *E, P, R, T.*

<sup>2</sup> From *E.*

**Note from the Record**—*continued*.

And Nicolas and Isabel come by Ellis of Semark (*de sancto Madero*), attorney of the said Isabel, and the said Isabel says that at present she has nothing in the said tenements save as wife of the said Nicolas etc. And the said Nicolas defends their right when etc., and he entirely denies that the said Simon cousin etc. died seised of the said tenements in his demesne as of fee, as the said Laurence and the others suppose by their writ. And as to this he puts himself upon the country.

And Laurence and the others likewise.

Therefore the sheriff was ordered that he cause to come here on the quindene of S. Hilary twelve etc. by whom etc. and who are neither etc. to find etc. because both etc.

63. TYCHEMERSHE *v.* DE LA MUSCHE.

## I.

## Cosinage.

Henry of Tychemershe<sup>1</sup> and Joan his wife brought a writ of cosinage against William de la Musche for certain tenements and made their descent from one Ives because he died without heir of his body to William as brother, from William etc.

*Herle.* Whereas you say that Ives died without heir of his body, after the death of this same Ives William against whom this writ is brought entered as son of Ives and is seised as heir. Judgment whether you can have an action.

*Scrope.* That amounts to this that Ives did not die without heir of his body. We are willing to aver that he did.

*Herle.* You have here William who tells you that he is the son of Ives and is seised as heir, and if you want to grant that he is the son of Ives and not heir, (then) show him why and we shall answer you.

*Scrope.* He is the son of one Adam Thomyl. Ready etc.

*Herle.* (He is) the son of Ives, accepted and recognised. Ready etc.

*Scrope.* You ought to answer in the same way in which I tendered my exception. Now, I said simply that he is the son of Adam Thomyl, and if you want to be at issue as to this, you must say : ‘not the son of Adam Thomyl but the son of Ives,’ without saying (anything) more. Judgment etc.

<sup>1</sup> Henry of Tychemershe was coroner for Northamptonshire in 1319, when he was said to be incapacitated by infirmity

and insufficiently qualified, and a fresh election was ordered (*Cal. Close* 1318-23, pp. 71, 574).



*Ber.* Si le prodhomme en sa vie le tynt pur son fuitz qy fuitz qil esteit. nous luy tendroms en mesme la manere et pur ceo lauerement est assethe bon.

Et lauerement fu resceu. *scilicet* tenu et conu le fuitz Iue.

## II.<sup>1</sup>

### Cosinage.

Henri de Chichemerche et Ione sa femme porta vn bref de Cosinage vers Willem le Mouche etc. e counterent de la seisine vn Iue dessendi a Giffrey com a frere de G. a I. com a file etc. qe ore demaunde ensemblement oue son baron etc.

*Denum.* Bien est uerite qe Iue murust seisi etc. apres qi mort mesme cesti W. de la Maunche entra com fiz et est eins com heir e vous ne dedites pas qil nest son fiz. mostrez dounqe ala curt pur quei il ne deit ne put estre heir.

*Scrop.* Ieo voil auerer mon bref.

*Ber.* Il dient qe Willem est einz com fiz eine dites donques nous pur quei il ne peut heir estre.

*Scrop.* Sire la ou il dit qil est fiz eyne etc. nous vous dioms qil nest pas son fiz eynz est le fiz vn Adam Conue pret etc.

*Denum.* Qil est pur le fiz eyne tenuz et conuz pret etc.

*Scrop.* A cela ne deuetz auenir qar auant ces houres auez respondu a nostre accion et auet dit qe W. fut le fiz eyne etc. simplement et sur ceo futes auowe et nous sur uostre respounse issue denparler a quei uous auet respondu qil nest pas son fiz einz est le fiz vn Adam etc. e ore deite vous qil est le fiz eine tenuz et conuz et issint aneste vous vostre respounse depus qe ele ne fut aucomensement apei vous ne deuez auenir iugement.

*Herle.* Vous ne deuete a cel la pled(er) par vostre r(espounse). Et dautrepart lun e lautre se tendent a vn effecte.

*Ber.* Sil veut sagement pleder il ne peut ne deit en ceo cas autre r(espounse) doner qil ad fet qar lun et lautre se tendent a vn effec(te). E pur ceo reseruet la verr(ement) si vous volet.

*Scrop.* Nent tenuz ne conuz pret etc.

*Et alii econtra.*

<sup>1</sup> From *R.*

BEREFORD C.J. If the good man<sup>1</sup> accepted him for his son in his lifetime, then whosoever son he was we shall hold him likewise (for the man's son). And therefore the averment is good enough.

And the averment was received, namely : ' accepted and recognised as the son of Ives.'

## II.

### Cosinage.

Henry of Tychemershe and Joan his wife brought a writ of cosinage against William de la Musche etc. and counted on the seisin of one Ives, (from him it) descended to Geoffrey as brother, from Geoffrey to Joan who now demands together with her husband etc., as daughter etc.<sup>2</sup>

*Denom.* It is quite true that Ives died seised etc., and after his death this same William de la Musche entered as son and is ' in ' as heir, and you do not deny that he is his son ; therefore show to the Court why he cannot be heir.

*Scrope.* I am willing to aver my writ.

BEREFORD C.J. They say that William is ' in ' as eldest son ; tell us, therefore, why he cannot be heir.

*Scrope.* Sir, whereas he says that he is the eldest son etc., we tell you that he is not his son but is the son of one Adam Thomyl.<sup>3</sup> Ready etc.

*Denom.* Ready etc. that he is<sup>4</sup> accepted and recognised as the eldest son.

*Scrope.* To that you cannot get, for before now you answered to our action and you said simply that William was the eldest son etc., and upon this you were avowed, and upon your answer we went out to imparl, and you answered to that that he is not his son but the son of one Adam etc., and now you say that he is the eldest son held and recognised (as such), and thus you annihilate your answer since it was not (made) in the beginning, and to this you cannot get. Judgment.

*Herle.* You ought not to plead to that by your answer. And on the other hand one and the other tend to the same effect.

BEREFORD C.J. If he wants to plead wisely he cannot, and ought not to, give in this case another answer than he has done, for one and the other tend to one effect. And therefore reserve the averment if you want to.

*Scrope.* Not held or recognised. Ready etc.

Issue joined.

<sup>1</sup> *prodhomme*.

<sup>2</sup> There is a certain confusion as to names, therefore we leave them as they stand in the Report.

<sup>3</sup> The Report has *conue*, which may also mean ' recognised.'

<sup>4</sup> *Corr.* was.



III.<sup>1</sup>

<sup>2</sup> Cosinage vbi tenens dixit. quod intrauit ut filius et heres.<sup>2</sup>

Iohan<sup>3</sup> tetemers et alice sa femme porterent lour bref de Cosynage vers Willem de Mouche<sup>4</sup> et dist qe vn yue murust seisi. de yue descendist a <sup>5</sup>W. com afrere<sup>5</sup> de W. a Iohan <sup>6</sup>com afiz<sup>6</sup> de I. a A.<sup>7</sup> qore demaunde ensemblement ou<sup>8</sup> soun baroun.

*Denoun.* Bien est verite qe yue morust seisi. apres qi mort W.<sup>9</sup> de Mouche<sup>4</sup> entra com fiz et <sup>10</sup>eynz est com<sup>10</sup> heir. iugement si vers luy accion puisset auer.

*Scrop.* Ceo est vn bref de possessioun dount si vous voilet vser ceste excepcioun. il <sup>11</sup>vous couynt vser<sup>11</sup> en la possessioun com clam(aunt) par mesme la descente.

*Denoun.* Lequel qe ceo soit bref de dreit ou de possessioun ieo vseray ceste excepcion tut al accioun qar ieo vous die qe vous ne deuez accioun auer. mes si homme voet il<sup>12</sup> put vser en la possessioun com adire<sup>13</sup> etc. mes nous vous dioms qil est fiz yue et eynz est com heir <sup>13</sup>etc.

<sup>14</sup>*Scrop.* Yue murust saunz heir de soun corps prest etc.

*Herle.* Willem est fitz yue et einz est com heir et vous ne dedistes pas qil nest soun fiz par qei sil ne put heir estre a ly le mostrez.<sup>14</sup>

*Scrop.* <sup>15</sup>Nous vous dioms qe<sup>15</sup> W.<sup>16</sup> nest pas fiz yue.<sup>17</sup> eynz fiz vn Willem Thone<sup>18</sup> prest etc.

*Denoun.* Le fiz yue<sup>19</sup> tenu et conu prest etc.

*Scrop.* Vous auez dit qe W.<sup>16</sup> etc. fiz etc.<sup>17</sup> et eynz<sup>20</sup> com<sup>21</sup> heir et cest excepcion prent<sup>22</sup> a nostre accioun et ceo qe vous dites ore<sup>23</sup> ceo est autre qe auaunt nest dist iugement etc. <sup>24</sup>estre ceo auant vous respondites a nostre accioun et simplement deites qe Willem fut fitz yue et sur ceo futes auowe et nous sur vostre r(espounse) issim(es) denparler a qei nous auoms r(espondu) qil nest pas soun fitz einz est le fitz vn Will C. et. ore dites vous qil est le fitz yue tenu et conu issint aneytez vous vostre r(espounse) de plus qe ele ne fut a Comencement a qei vous ne deuez auenir.

*Herle.* Vous me donez cella a pleder par my vostre r(espounse). estre ceo lun et lautre se tendent a vn efect.

<sup>1</sup> From *P.* Compared with *T.* <sup>2-2</sup> *Om. T.* <sup>3</sup> *Add: de T.* <sup>4</sup> la Mousche *T.* <sup>5-5</sup> Willem ut fratri *T.* <sup>6-6</sup> ut filio *T.* <sup>7</sup> Alice *T.* <sup>8</sup> *Add: Iohan T.* <sup>9</sup> Willem *T.* <sup>10-10</sup> *Om. T.* <sup>11-11</sup> couient qe vous la vsez *T.* <sup>12</sup> illa *T.* <sup>13-13</sup> etc. *Denom.* qi fitz est Willem qe nous dionz est fitz euisne (*sic*) etc. *T.* <sup>14-14</sup> This is a marginal addition in *P*, and is omitted in *T.* <sup>15-15</sup> *Om. T.* <sup>16</sup> Willem. *T.* <sup>17</sup> eisne *T.* <sup>18</sup> Thom'. *T.* <sup>19</sup> eine *T.* <sup>20</sup> *Add: est T.* <sup>21</sup> *Add: fitz et T.* <sup>22</sup> preistes *T.* <sup>23</sup> *Add: le fitz eigne tenu et conu T.* <sup>24</sup> See note 1, p. 221.

## III.

Cosinage, where the tenant said that he had entered as son and heir.

Henry de Tychemershe and Joan his wife brought their writ of cosinage against William de la Musche and said that one Ives had died seised, from Ives (it) descended to W. as brother, from W. to John as son, from John to (Alice) who now demands together with her husband.

*Denom.* It is quite true that Ives died seised, (but) after his death William de la Musche entered as son and is 'in' as heir. Judgment whether you can have action against him.

*Scrope.* This is a possessory writ, therefore if you want to use this exception you must use it as to possession, claiming by the same descent.

*Denom.* Whether this be a writ of right or a possessory writ, I shall use this exception to the action, for I tell you that you ought not to have an action, but if one wants one can use it<sup>1</sup> as to possession, namely, by saying <sup>2</sup> 'whose son is William who we say is the elder son' <sup>2</sup> etc., but we tell you that he is a son of Ives and is 'in' as heir etc.

*Scrope.* Ives died without heir of his body. Ready etc.

*Herle.* William is son of Ives and is 'in' as heir and you do not deny that he is his son, and therefore if he cannot be his heir, show it.

*Scrope.* We tell you that William is not a son of Ives but a son of Adam Thomyl. Ready etc.

*Denom.* The son of Ives, accepted and recognised. Ready etc.

*Scrope.* You said that William etc. son etc. and 'in' as heir and <sup>3</sup>you took<sup>3</sup> this exception to our action, and as to what you say now that is different from what (was) said before. Judgment etc. Moreover, you answered to our action before and you said simply that William was the son of Ives and you thereupon were avowed and we went out to imparl upon your answer and we answered to that that he is not his son, but is the son of one Adam Thomyl, and now you say that he is the son of Ives, held and recognised, and thus you annul your answer by more than it was in the beginning, and to that you cannot get.

*Herle.* You give me this plea by your answer. Moreover, the one and the other tend to the same effect.

<sup>1</sup> Supplied from *T*.

<sup>2-2</sup> Supplied from *T*.

<sup>3-3</sup> Supplied from *T*. *P* has: (he) takes.



*Ber.* Sil veult saiemment pleder il ne put en son cas autre r(espouse)  
doner qil nad fet qar lun et lautre se tendent a vn efect.

*Scrop.* Nent conuz et tenuz prest etc.

*Et alii econtra.*<sup>1</sup>

*Ber.* Ceo qil dit ore nest forqe aforsaunt sa primere r(espouse)  
qar riens nest chaunge.

*Et stetit verificacio.*

### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 296 verso. Northamptonshire.  
Written by Luding'.

Henricus de Tychemershe et Iohanna vxor eius per attornatum suum  
petunt uersus Willelmum de La Musche de luffewyke duo mesuagia sexaginta  
acras terre tres acras prati et quinque solidatas et octo denar(atas) redditus  
cum pertinenciis in Luffewyke et Aldewyncl de quibus Iuo la Musche con-  
sanguineus predictae Iohanne cuius heres ipsa est, fuit seisis in dominico suo  
vt de feodo die quo obiit etc. Et vnde dicunt quod predictus Iuo consanguineus  
etc fuit seisis de predictis tenementis in dominico suo vt de feodo tempore  
pacis tempore H regis aui domini Regis nunc capiendū inde expletas ad valen-  
ciam (*sic*) Et inde obiit seisis etc Et de ipso Iuone quia obiit sine herede de  
se, descendit feodum etc. cuidam Willelmo vt fratri et heredi Et de ipso  
Willelmo cuidam Willelmo vt filio et heredi Et de ipso Willelmo descendit  
feodum etc. isti Iohanne que nunc petit simul cum predicto Henrico viro suo  
vt filie et heredi Et inde producunt sectam etc.

Et Willelmus per attornatum suum venit Et defendit Ius suum qu(ando)  
etc Et dicit quod eisdem Henrico et Iohanne accio competere non potest  
etc Dicit enim quod post mortem predicti Iuonis de cuius seisis etc, qui  
de predictis tenementis obiit seisis in dominico suo vt de feodo, intrauit  
Idem Willelmus in eisdem tenementis Et est inde in seisis vt filius et heres  
ipsius Iuonis Et petit iudicium si predicti Henricus et Iohanna uersus ipsum  
Willelmum accionem habere possint etc.

Et Henricus et Iohanna dicunt quod per ipsum Willelmum ab accione sua  
precludi non debent in hac parte, Dicunt enim quod idem Willelmus non est  
filius predicti Iuonis, Immo filius cuiusdam Ade Thomyl Et hoc parati sunt  
verificare etc. Et petunt iudicium etc.

Et Willelmus dicit vt prius quod ipse est filius predicti Iuonis, et quod  
idem Iuo in vita sua ipsum Willelmum tenuit pro filio suo Et de hoc ponit  
se super patriam.

Et Henricus et Iohanna similiter.

Ideo preceptum est vicecomiti quod venire faciat hic a die Pasche in tres  
septimanas xii etc per quos etc. Et qui nec etc. Quia tam etc.

<sup>1</sup> From fig. <sup>24</sup> on p. 220 is a marginal addition in *P*, and is omitted in *T*.

BEREFORD C.J. If he wants to plead wisely he cannot give another answer in his case than he has done, for one and the other tend to one effect.

*Scrope.* Not recognised and accepted. Ready etc.

Issue joined.

<sup>1</sup>BEREFORD C.J. That which he says now is only afforcing his first answer for nothing is changed.<sup>1</sup>

And the averment stood.

#### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 296 verso. Northamptonshire.  
Written by Luding'.

Henry of Tychemershe and Joan his wife by their attorney demand against William de la Musche of Lowick two messuages, sixty acres of land, three acres of meadow and 5s. 8d. worth of rent with the appurtenances in Lowick and Aldwinkle of which Ives la Musche cousin of the said Joan whose heir she is, was seised in his demesne as of fee on the day on which he died etc. And concerning this they say that the said Ives cousin etc. was seised of the said tenements in his demesne as of fee in time of peace in the time of King Henry grandfather of our Lord the present King, taking thereof the esplees to the value (etc.), and died seised thereof etc. And from that Ives because he died without heir of his body, the fee etc. descended to one William as brother and heir, and from that William to one William as son and heir, and from that William the fee etc. descended to this Joan who now demands together with the said Henry her husband, as daughter and heir. And as to this they produce suit etc.

And William comes by his attorney, and defends their right when etc., and he says that the said Henry and Joan cannot have action etc., for he says that after the death of the said Ives on whose seisin etc., and who died seised of the said tenements in his demesne as of fee, he, William, entered the same tenements and is seised thereof as son and heir of the said Ives. And he prays judgment whether the said Henry and Joan can have an action against him, the said William, etc.

And Henry and Joan say that they ought not to be precluded by the said William from their action in this respect, for they say that the said William is not a son of the said Ives, but is the son of one Adam Thomyl, and this they are ready to aver etc. And they pray judgment etc.

And William says as before that he is the son of the said Ives, and that the said Ives did in his lifetime accept him, William, for his son. And as to this he puts himself upon the country.

And Henry and Joan likewise.

Therefore the sheriff was commanded that he cause to come here in three weeks from Easter twelve etc. by whom etc. and who are neither etc. because both etc.

<sup>1-1</sup> This statement of BEREFORD C.J. may be an additional explanation of what he said just before.



64. HERTFORD *v.* PERCY.<sup>1</sup>I.<sup>2</sup>

(Quare) eiecit.

Mestre Adam de Herteford porta vn *quare eiecit* vers H. le percy et dist qe a tort luy deforce etc. et pur ceo a tort qe vn Reyner de Cnol luy lessa certeynz tenemenz a terme de .vii. aunz le terme comensaunt a la feste seynt Martine lan del regne le Roi E<sup>3</sup> qe mort est. xxx terce parmy quel lees il fu seisi del iour auaundit. tanqe a la feste seynt Martin lan del Regne le Roi qore est primer qe mesme cesti Reyner aliena les auaundiz tenemenz al auaundit Henri par encheson de quel vent mesme cesti .H. luy engetta a tort et a cez damages etc.

*Scrop.* Cest vn bref de *quare eiecit* ou le terme qe a luy fu lesse est passe auxi come il supposa par son count en quel cas il ne recouera qe damages de qey son recouerer luy est reserue par bref de cou(enant) vers le h(eir) Reyner de Cnol. iugement si vers nous poet il rien demander.

*Denum.* Mon recouerer mest done vers vous qe mad fait le tort et si ieo ey deus recouerers. ieo purrey eslire a quel. qe ieo vodrey et voloms auer qe vous nous auetz engette auxi com nostre bref suppose iugement si vous ne deuetz respondre.

*Scrop.* Desicom le terme est passe vous naueretz nul recouerer vers nous qar vous ne recoueretz qe damages et noun pas le terme eynz

<sup>1</sup> Reported by *B, E, F, M, P, R, X.*<sup>2</sup> From *E.*<sup>3</sup> Interlined.

64. HERTFORD *v.* PERCY.

## I.

*Quare eiecit.*

Master Adam of Hertford brought a *quare eiecit* against Henry Percy<sup>1</sup> and said that he wrongfully deforces from him etc. and for this reason wrongfully, that one Rayner of Knol leased to him certain tenements for a term of seven years, the term beginning at (November 11, 1304) Martinmas in the thirty-third year of the reign of King Edward who is dead, and by that lease he was seised from the said day until (November 11, 1307) Martinmas of the first year of the reign of the King who now is, (when) the said Rayner alienated the said tenements to the said Henry, and under cover of the said sale the said Henry ejected him wrongfully and to his loss etc.

*Scrope.* This is a writ of *quare eiecit*, and the term for which he leased to him is past, as he supposes by his count, and in such a case he shall only recover his damages, of which the recovery is reserved to him, by writ of covenant, against the heir of Rayner of Knol. Judgment whether he can demand anything against us.

*Denom.* My recovery is given me against you who have done a wrong to me, and if I have two recoveries I can choose the one which I want, and we are willing to aver that you ejected us as our writ supposes. Judgment whether you ought not to answer.

*Scrope.* Since the term is past you shall have no recovery against us (for you shall only recover damages and not the term), but

<sup>1</sup> Henry Percy was made Warden of the parts of Galloway as far as Roxburgh by Edward I, and was still in Scotland in March 1307 (*Cal. Close* 1302-7, pp. 433, 487; *Chron. Mon. de Melsa*, ii, 263), but he was summoned to the coronation of Edward II in January 1308 and was with the King at Windsor in June (Rymer, *Fœdera*, iii, 52, 92). He joined in the Stamford letter to the Pope in 1309, and in the petition for the Ordainers in the following year (*Chron. Edw. I and Edw. II* (Rolls Ser.), i, 162, 170). In 1311 he was granted the custody of Durham during the vacancy of the See (*Reg. Pal. Dunelm.* (Rolls Ser.), iv, 82-4); and the Ordainers appointed him Justice of the Forests north of Trent and Warden of Scarborough (Rymer, *op. cit.* iii, 213). He refused to surrender

Scarborough Castle to Latimer at the King's command (see above, p. 85, note 1), and occupied Newcastle-on-Tyne when Edward granted the Forest Justiceship to Gaveston (*Cal. Pat.* 1307-13, p. 460; *Chron. Edw. I and Edw. II*, i, 204). He joined in the capture of Gaveston at Scarborough, and his lands were subsequently taken into the King's hands, but they were restored in the autumn of 1313, when he was pardoned for his share in the favourite's death (*Chron. Mon. de Melsa* (Rolls Ser.), ii, 327; *Fœdera*, iii, 334, 439; *Cal. Pat.* 1313-17, p. 21). He was summoned to Parliament as a baron 1299-1314 (G. E. C., *Complete Peerage*), and died before January 28, 1315 (*Cal. Close* 1313-18, pp. 148, 170; *Cal. Pat.* 1313-17, p. 214).



aueretz vostre recouerer vers vostre lessour ou vers son heir par bref de cou(enaunt).

*Denum.* Deynz le terme le bref fu purchace iugement si vous ne deuertz respoudre.

*Heruy.* Il couent qe vous respondiez a cesti bref de transgression qe le bref fu purchace durant le terme et il afferme le tort en vous par qey responez.

*Scrop.* Il nauoit vnke rien del lees Reyner prest etc.

*Denum.* A tel auerement ne deuertz auenir qe nous affermons vn tort en vostre persone le quel tort nous donne accioun a qey vous ne r(esponez) neient iugement.

*Scrop.* La ou vous dites qe Reyner vous lessa les tenementz la comense vostre accioun et a cel qe vous donne accioun auoms respondu et auoms dit qil ne lessa pas a vous iugement si la r(espounce) ne seit assethe bon.

*Heruy.* Il ne desdit neient qil vous osta mes il dit qe vous nauietz vnke rien. del lees Reyner issi qil vous poeit engette pur qey nest cel bon r(espounce) auxi com en assise de nouele disseisine cest bon respounce il . . . e vous dis(seisi) pas ou il purra dire. vnke seisi issi qe vous purrietz estre disseisi. auxi par desa.

*Denum.* Cest vn bref de transgression et auoms assigne vn tort en sa persone qil nous ad engette et a cel qe luy est surmis si deit il respondre et cel ne fet il pas iugement.

*Scrop.* Il nauoit vnkes rien del lees Reyner issi qil poeit estre engette prest etc.

*Et alii contra.*

## II.<sup>1</sup>

*Quare eiecit* <sup>2</sup>ou le tenant voloit auerer qe le demaundant nauoit vnques rien de lees s . . . et a cel auerement (feut) receu.<sup>2</sup>

Ceo vous<sup>3</sup> Richard de Hereford etc. qe Henri de Percy etc. atort ly deforce vi mees et vi bouez de terre etc. <sup>4</sup>ou H. de Coluille<sup>4</sup> qe ly lessa aterme qe nest mye vnqore passe et pourceo atort qe la ou R. etc. ly

<sup>1</sup> From *M.* Compared with *B.* *F.* Headnote from *B.* <sup>2-2</sup> *infra terminum* ou le tenant fut receu a trauerser le Lees saunz respondre a le engettement *F.*

<sup>3</sup> *Add:* monstre *B.* *Add:* mustre *F.* <sup>4-4</sup> en *B.* qe *R.* de Colleuille *B.* en *H.* qe *R.* de *E. F.*

you shall have your recovery against your lessor or against his heir, by writ of covenant.

*Denom.* The writ was purchased during the term. Judgment whether you ought not to answer.

STANTON J. You must answer to this writ of trespass, for the writ was purchased during the term and he affirms the wrong in you. Therefore answer.

*Scrope.* He never had anything by a lease of Rayner. Ready etc.

*Denom.* To such an averment you cannot get, for we affirm a wrong in your person and that wrong gives us an action and you do not answer to that. Judgment.

*Scrope.* Since you say that Rayner leased the tenements to you, that is where your action begins, and we have answered to that which gives you an action and have said that he did not lease to you. Judgment whether the answer is not good enough.

STANTON J. He does not deny that he ousted you but he says that you never had anything by the lease of Rayner, so that he could (not) have ejected you. Why is that not a good answer? Just as in an assize of novel disseisin it is a good answer (to say that he) did not disseise you, or he can say 'never seised so that you could (not) have been disseised,' so it is here.

*Denom.* This is a writ of trespass and we have assigned a wrong in his person, (namely,) that he ejected us, and he ought to answer to that with which he is charged, and he does not do that. Judgment.

*Scrope.* He never had anything by the lease of Rayner, so that he could (not) have been ejected. Ready etc.

Issue joined.

## II.

*Quare eiecit*, where the tenant wanted to aver that the demandant never had anything by the lease (of his predecessor) and was received to this averment.

Showeth<sup>1</sup> to you Adam of Hertford etc. that Henry of Percy etc. wrongfully deforces him from six messuages, six bovates of land, etc., in Buckden<sup>2 3</sup> which Rayner of Cnol<sup>3</sup> leased to him for a term which

<sup>1</sup> Supplied from *B*.

<sup>2</sup> In Craven, Yorks. Early in 1319 John of Gisburn and Beatrice his wife sought against Eleanor, widow of Henry Percy, certain lands in Buckden as the dower of Beatrice of the gift of Rayner de Cnoll, and Eleanor vouched to warranty Henry son and heir of Henry Percy, a minor in the King's wardship.

It was considered that John and Beatrice should recover seisin and Eleanor should have the value from the heir's land. The lands in Buckden were valued at £9 16s., whereof one-third was delivered to John and Beatrice March 6, 1319 (*Cal. Close* 1318-23, p. 178).

<sup>3-3</sup> Supplied partly from *B*, partly from the Record.



lessa les tenements auant le iour de seint Martyn lan etc. tanqe a terme de viii<sup>1</sup> aunz procheinz par qel lees A.<sup>2</sup> feut seisi del iour auaundit tanqe le Lundy etc. lan etc. qe mesme cesti R. ly vendi les tenements auantdit etc. par encheson de quele vente mesme<sup>3</sup> cely<sup>3</sup> H. ly engetta a tort et ases damages etc.

*Scrop.* Vous auez entendu coment il prent saccioun dun lees a terme de qel terme si le lees feut fait com il ad dit, com nous ne grauntom (*sic*) pas, le terme est passe et il bie recouerir le terme etc. iugement sil deiue estre receu.<sup>4</sup>

*Den.* Volletz vous donqe conustre le lees etc.

*Scrop.* Ceo nay ieo mestier mes depuis qe vous sopposez le terme estre<sup>5</sup> passe tot auoit il lees com nous ne grauntom pas iugement si nous deuoms estre charg' depuis qe vous auez vostre recouerir par bref de couenant vers Robert ou vers son heir.

*Denom.* Nostre bref feut purchace durant le terme et depuis qe vous ne poez dedire le lees ne lengettement etc.<sup>6</sup> et mesqe ieo puis auoir recouerir vers Robert par bref de couenant ceo ne me ouste pas de ceste recouerir qe par cas cest en ma eleccioun de eslire.

*Heruy a Scrop.* R(espondez) al engettement.

*Scrop.* Prest dauerrer qil nauoit vnqes rien del lees etc.

*Denom.* Ceo nest mye r(esponse) sanz<sup>7</sup> r(espondre) al engettement.

*Heruy.* Coment porriez<sup>8</sup> estre engette la ou vous nauiez vnqe rien.

*Den.* De puis qe nous p(er)noms nostre accioun del engettement illy couient r(espondre) a ceo.

*Heruy.* Il vous r(espondit) assez.

Et feut lauerrement r(eceu) qil nauoit rien du lees.

### III.<sup>9</sup>

En *Quare eiecit*.

*Scrop.* Vous supposez par counte le terme estre passe ou vostre recouery vous est done par brief de couenaunt vers vostre lessour et ses heirs. Iugement si a ceo Brief serez r(espondu).

*Denhom.* Nostre brief fust purchace deinz le terme et nous pooms eslire.

Par qey agarde fust qe il dust respondre al brief.

*Scrop.* La ou ils supposent qe A luy lessa il nauoit vnqes rien de son lees prest etc.

*Denh.* Il couent respondre al engettre.

Et ta(nde)m lauerement fust receu sur le lees par agard.

<sup>1</sup> vii F.    <sup>2</sup> Richard F.    <sup>3</sup> Om. B.    <sup>4</sup> respondu F.    <sup>5</sup> Add: nient B.  
<sup>6</sup> Add: iugement B, F.    <sup>7</sup> Add: a nostre accioun sanz ceo qe vous F.    <sup>8</sup> porreit il F.    <sup>9</sup> From X.

is not yet past, and for this reason wrongfully that whereas Rayner etc. leased to him the tenements before Martinmas Day in the year etc. for a term of eight years following, and by that lease Adam was seised from the said day until the Monday etc., in the year etc. when the said Rayner sold the said tenements etc., under the pretext (*encheson*) of that sale the said Henry ejected him wrongfully and to his loss etc.

*Scrope.* You have heard how he takes his action on a lease for a term of years, and if for that term the lease was made as he has said, and as we do not admit, the term is past; and he wants to recover the term etc. Judgment whether he ought to be received.

*Denom.* Do you want, then, to acknowledge the lease? etc.

*Scrope.* I have no need to do that, but since you suppose that the term is past, even if there was a lease, which we do not admit, (we pray) judgment whether we ought to be charged since you can have your recovery by a writ of covenant against Rayner or against his heir.

*Denom.* Our writ was purchased during the term, and since you cannot deny the lease or the ejectment etc., even if I can have a recovery against Rayner by a writ of covenant that does not oust me from this recovery, for perhaps it is left in my choice to decide.

STANTON J. to *Scrope.* Answer to the ejectment.

*Scrope.* Ready to aver that he never had anything by the lease etc.

*Denom.* This is no answer if you do not answer to the ejectment.

STANTON J. How could you have been ejected if you never had anything?

*Denom.* Since we take our action upon the ejectment he must answer to that.

STANTON J. He answered you enough.

And the averment that he had nothing by the lease was received.

### III.

#### In a *quare eiecit*.

*Scrope.* You suppose by the count that the term is past, and in such a case your recovery is given you by writ of covenant against your lessor and his heirs. Judgment whether you will be answered to this writ.

*Denom.* Our writ was purchased during the term and we can choose. Therefore it was awarded that he should answer to the writ.

*Scrope.* Whereas they suppose that A. leased to him, he never had anything by his lease. Ready etc.

*Denom.* There must be an answer to the ejectment.

And finally, by award, the averment as to the lease was received.



IV.<sup>1</sup>

Nota <sup>2</sup>ou le termer recouere son terme par le *Quare eiecit* apres le terme passe.<sup>2</sup>

Si<sup>3</sup> le<sup>4</sup> termer seit ouste par la alienacioun le lessour<sup>5</sup> et les termes seynt passes. einz ceo qil purchac(ea)<sup>6</sup> par le *quare eiecit*. et il ceo<sup>7</sup> purchace apres il sera respondu et recouera ces<sup>8</sup> termes ensemblement<sup>9</sup> oue ces damagez. ou *Toud. Herle*<sup>10</sup> *Scrop* ex(cepci)onerent<sup>11</sup> al bref pur ceo qe les termes furent passez: et bref fuit aiuge<sup>12</sup> bon par *Berr. Scrop Iustice*. <sup>13</sup>*t(estis) placitum*<sup>13</sup> inter Adam de Herford<sup>14</sup> et Henricum<sup>15</sup> de Percy etc.<sup>16</sup>

## Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 235 verso. Yorkshire.  
Written by Luding'.

Henricus de Percy summonitus fuit ad respondendum Magistro Ade de Hertford de placito quare deforc(iat) prefato Ade sex mesuagia sex bouatas terre et quindecim acras prati cum pertinentiis in Bukedene que Reynerus de Knol prefato Ade ad terminum qui nondum preteriit dimisit infra quem terminum idem Reynerus prefato Henrico predicta mesuagia terram et pratum vendidit, occasione cuius vendicionis idem Henricus prefatum Adam de predictis mesuagio terra et prato eiecit etc. Et vnde idem Magister Adam per Thomam de vckerby attornatum suum dicit quod cum predictus Reynerus die Iouis in festo sancti Martini anno regni E Regis patris domini Regis nunc tricesimo tercio apud Buckedene dimississet (*sic*) prefato Magistro Ade predicta tenementa cum pertinentiis Tenenda vsque ad terminum septem annorum proximo sequ(encium): Et idem Magister Adam fuisset inde in bona et pacifica seisina racione dimissionis predicte, vsque (*sic*) festum inuencionis sancte crucis anno regni domini Regis nunc primo: predictus Reynerus predicta tenementa infra predictum terminum prefato Henrico vendidit, idem Henricus occasione illius vendicionis predicto die Inuencionis sancte crucis: predicta tenementa infra predictum terminum prefato Henrico vendidit, ipsum Magistrum Adam de predictis tenementis eiecit, et illa ei adhuc deforciat minus iuste etc vnde dicit quod deterioratus est et dampnum habet ad valenciam centum librarum Et inde producit sectam etc.

Et Henricus per attornatum suum venit Et defendit vim et iniuriam qu(ando) etc Et dicit quod cum predictus Magister Adam dicit se fuisse seisitum de predictis tenementis per dimissionem predicti Reyneri in forma predicta: idem Magister Adam non fuit in seisina predictorum tenementorum per aliquam dimissionem predicti Reyneri. Et hoc paratus est verificare etc. Et petit iudicium etc.

<sup>1</sup> From *P.* Compared with *R.*    <sup>2-2</sup> *Om. R.*    <sup>3</sup> *Nota. si R.*    <sup>4</sup> *Om. R.*  
<sup>5</sup> *feffur R.*    <sup>6</sup> *se purch(asa) R.*    <sup>7</sup> *se R.*    <sup>8</sup> *ceux R.*    <sup>9</sup> *semplement R.*  
<sup>10</sup> *Add: et R.*    <sup>11</sup> *ex(cepci)on r' R.*    <sup>12</sup> *agarde R.*    <sup>13-13</sup> *T(este) placito R.*  
<sup>14</sup> *Her(e)ford R.*    <sup>15</sup> *H. R.*    <sup>16</sup> *per c(onsim)ile iud(icium) R.*

## IV.

Note where the termor recovers his term by the *quare eiecit* after the term is past.

If the termor be ousted by alienation of the lessor and the term (for) which he purchased be past, he will be answered upon the *quare eiecit* (if) he purchased it afterwards, and he will recover his term together with his damages. (This happened) where *Toudeby*, *Herle*, and *Scrope* took exception to the writ because the term was past, and the writ was adjudged good by BEREฟอร์ด C.J., (and) SCROPE J. Witness the plea between Adam of Hertford and Henry of Percy etc.<sup>1</sup>

## Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 235 verso. 3 Yorkshire.  
Written by Luding'.

Henry of Percy was summoned to answer Master Adam of Hertford in a plea why he deforces from the said Adam six messuages, six bovates of land, and fifteen acres of meadow with the appurtenances in Buckden, which Rayner of Knol leased to the said Adam for a term which is not yet past; and within the said term the said Rayner sold to the said Henry the said messuages, land, and meadow, and by reason (*occasione*) of that sale the said Henry ejected the said Adam from the said messuage, land, and meadow etc. And concerning this matter the said Master Adam says by Thomas of Uckerby, his attorney, that whereas the said Rayner on (November 11, 1304) Thursday, Martinmas Day, in the thirty-third year of the reign of King Edward father of our Lord the present King at Buckden leased the said tenements with the appurtenances to the said Master Adam, to be held for the term of seven years next following; and (whereas) the said Master Adam had by reason of the said lease good and peaceful seisin thereof until (May 3, 1307) the feast of the Finding of the Holy Cross in the first year of the reign of our Lord the present King: the said Rayner sold the said tenements within the said term to the said Henry (and) the said Henry by reason (*occasione*) of that sale on the said day of the Finding of the Holy Cross ejected the said Master Adam from the said tenements, and until now deforces them from him unjustly etc., whereby he says that he has suffered loss and has damage to the value of £100. And as to this he produces suit etc.

And Henry comes by his attorney, and denies force and wrong when etc. And he says that whereas the said Master Adam says that he was seised of the said tenements by the lease of the said Rayner in the said form: the said Master Adam was not seised of the said tenements by any lease of the said Rayner. And this he is ready to aver etc. And he prays judgment etc.

<sup>1</sup> The text is obviously full of mistakes.



## Note from the Record—continued.

Et Magister Adam dicit quod ipse fuit in pacifica seisina de predictis tenementis per dimissionem predicti Reyneri vt predictum est, quousque predictus Henricus ipsum Magistrum Adam inde eiecit sicut queritur Et hoc petit quod inquiratur per patriam.

Et Henricus similiter.

Ideo preceptum est vicecomiti quod venire faciat hic in crastino Purificacionis beate Marie xii etc per quos etc Et qui nec etc Quia tam etc.

65. GOLDYNTON v. HARDY.<sup>1</sup>

*Quare eiecit infra terminum.*

Ion de Goldynton porta soun bref *quare eiecit infra terminum* vers Mich. Hardy et fut le bref tel. *Si Iohannes filius Thome de Gold(ynton) fecerit etc. tunc sumhone etc. Micaelem de Hardy quod sit etc. ostensurus etc. quare cum Hugo de Bello campo duas partes vnus molendini cum pertinenciis en C. Thome de Gold(ynton) patri predicti I. cuius etc. ad terminum xii. annorum eidem T. et heredibus suis vsque ad dictum terminum completum habendas eidem I. post mortem ipsius T. vt filius et heres eiusdem T. in plena et pacifica seisina dictarum duarum parcium iuxta formam dimissionis predictae diu extitisset predictus M. prefatum I. infra terminum predictum a dictis duabus partibus violenter eiecit vt dicit. et habeas etc.*

*Migg.* Cesti bref nest pas conscu en dr(eite) forme qe ceo nest pas bref de Couenaunt. ne bref *quare eiecit infra terminum* et nentendoms pas qe a teu bref consceu hors de forme saunz commune assent du consail deuoms respondre.

*Hinge.* Bref de Couenaunt ne gist pas vers estraunge. et le *quare eiecit* est done vers estraunger *occasione cuiusdam vendicionis*. si dunqe vn estraunge moy engette de soun tort demesne de moun terme. queu bref moy dorret vous.

<sup>1</sup> From *G.*

**Note from the Record**—*continued*.

And Master Adam says that he was peacefully seised of the said tenements by the lease of the said Rayner as was said before, until the said Henry ejected him the said Master Adam therefrom, as he complains. And he prays that this be inquired by the country.

And Henry likewise.

Therefore the Sheriff was commanded that he cause to come here on the morrow of Purification of Blessed Mary twelve etc. by whom etc. and who are neither etc. because both etc.

65. GOLDYNTON *v.* HARDY.*Quare eiecit infra terminum.*

John of Goldynton<sup>1</sup> brought his writ *quare eiecit infra terminum* against Michael Hardy, and the writ was such: If John the son of Thomas of Goldynton shall give etc., then summon etc. Michael Hardy that he be etc. to shew etc. why, whereas Hugh Beauchamp (leased) two parts of one mill with the appurtenances in C. to Thomas of Goldynton father of the said John whose (heir) etc. for a term of twelve years to be had to the said Thomas and his heirs until the completion of the said term, and the said<sup>2</sup> John after the death of the said Thomas, as son and heir of the said Thomas, was long seised fully and peacefully of the said two parts according to the form of the said lease, the said Michael did violently eject the said John within the said term from the said two parts, as he says. And have etc.

*Miggeley.* This writ is not conceived in the right form, for this is neither a writ of covenant nor a writ *quare eiecit infra terminum* and we do not think that we ought to answer to such a writ, not conceived in proper form (*hors de forme*), without common assent of the council.

INGE J.<sup>3</sup> A writ of covenant does not lie against a stranger, and the *quare eiecit* is given against a stranger 'on the occasion of a certain sale.' Therefore if a stranger, of his own wrong, eject me from my term, what writ would you give me?

<sup>1</sup> A John of Goldington was assessor and collector of the 15th and 20th in Westmorland in 1307 (*Cal. Pat.* 1307-13, p. 24), but it is not clear that he can be identified with the plaintiff in this case. A man of the same name was killed in 1310 (*ibid.* p. 331), and the son of William of Goldington (see Case 66 below) was also called John, though the latter is not likely to have held

office in the north.

<sup>2</sup> We assume that *eidem* is a mistake for *et idem*.

<sup>3</sup> We take *Hinge* to be INGE J., who took office in the following (Hilary) Term. It is possible that that case was heard in that term. In any case the second statement attributed to him shows that he acted as a judge.



*Migg.* Si termer seiȝ engette par son lessor. ou ces heirs. vers eus gist bref de Couenaunt. si par estraunge de sa autorite demesne. le lessor rescuera par <sup>1</sup>asse le fraunctenant<sup>1</sup> et pus le termer vers le lessur par bref de Couenaunt son terme.

*Hinge.* Cesti bref est consceu en soun cas par la ou termer est oste par estrange sanz encheson de vente. et pur ceo responez.

*Migg.* Huwe de Beach(amp) enfeffa vn S. son fiz de deus parties dun Molyn le quel S. morust seisi apres qi mort Ion de B. entra cum frere et heir et enfeffa Michel. et issint entra par feffement et nent engetta Ion prest.

*Et alii econtra.*

*Et ideo ad patriam.*

66. GOLDINGTON v. ANON.<sup>2</sup>I.<sup>3</sup>

Entre *ad terminum qui preteriit* <sup>4</sup>ou le tenant dit qil entra par iugement.<sup>4</sup>

William <sup>5</sup>de Goldington<sup>5</sup> et Marg'<sup>6</sup> sa femme porterent lour bref

<sup>1-1</sup> *Corr.* assise le fraunctenement?

<sup>2</sup> Reported by *F, M, P, T, X.*

<sup>3</sup> From *M.* Compared with *F, P, T.*

<sup>4-4</sup> *Om. P.* No headnote in *T*

<sup>5-5</sup> Goldyngtone *F.* Golde *P.* Galde *T.*

<sup>6</sup> Maude *F, P, T.*

*Miggeley.* If the termor be ejected by his lessor or (the lessor's) heirs, a writ of covenant lies against them; if (he be ejected) by a stranger (acting) on his own<sup>1</sup> authority, the lessor will recover the free tenement<sup>2</sup> by assize and then the termor (will recover) his term against the lessor by writ of covenant.

INGE J. This writ<sup>3</sup> is conceived in a case where the termor is ousted by a stranger and not on the occasion of sale. And therefore answer.

*Miggeley.* Hugh Beauchamp enfeoffed one S., his son, of two parts of a mill, and that S. died seised; after his death John Beauchamp entered as brother and heir and enfeoffed Michael; and thus he entered by feoffment and did not eject John. Ready etc.

Issue joined.

And therefore to the country.

## 66. GOLDINGTON v. ANON.

### I.

Entry *ad terminum qui preteriiit* where the defendant said that he (had) entered by judgment.

William of Goldington<sup>4</sup> and Maud<sup>4</sup> his wife brought their writ

<sup>1</sup> *I.e.* the stranger's (not acting for the lessor, in which case the lessor would be responsible).

<sup>2</sup> This seems the reasonable meaning of a corrupt passage.

<sup>3</sup> *I.e.* the writ or writs mentioned by *Miggeley*.

<sup>4</sup> William of Goldington is mentioned in the Year Books as an advocate in the first year of the reign of Edward II (Foss, *Judges*, iii, 258; *Year Books of Edw. II*, i, xciv). He was a commissioner in Essex to inquire into unlawful prises in 1309 and into forestalling in 1311 (*Cal. Pat.* 1307-13, pp. 248, 329). In the latter year he was also appointed to inquire into robbery in Essex, as the keepers of the peace had no leisure to attend to the matter (*ibid.* p. 426), and he acted as a commissioner of oyer and terminer till shortly before his death (*ibid.*, *passim*; 1313-17, *passim*; 1317-1321, p. 465). He was first appointed a justice of assize in 1310, and was summoned to Parliament in virtue of his office until 1318 (*Cal. Close* 1307-13, p. 337; Foss, *Judges*, iii, 259); a note of the payment of his salary of 40 marks for the Kentish eyre (*Cal. Pat.* 1307-13

pp. 589, 592, 596) is to be found in the Close Roll for 1313 (*Cal. Close* 1313-18, pp. 24-5). In 1315 he was appointed justice to perambulate the forests in Cambridgeshire, Essex and Huntingdonshire (*Cal. Pat.* 1313-17, p. 296). From 1314-17 he was a commissioner to inquire into illegal confederacies in Essex (*ibid.* 1317-21, p. 96), and into the malpractices of the King's ministers and the use of measures in the counties of Cambridge, Huntingdon, Bedford, Buckingham, Essex, Hertford and Middlesex (*ibid.* 1313-17, pp. 129, 248, 686, 689); and it was perhaps in revenge for his activities that his timber at Thele in Hertfordshire was destroyed in 1313 and 1314 (*ibid.* pp. 56, 227). In 1315 he was appointed to inquire into the conduct of the elder Despenser (*ibid.* p. 408), and into the accusations of bribery brought against the officials responsible for the selection of ships and crews for the King's service (*ibid.* pp. 329, 418). He had various international disputes to determine between 1313 and 1318; these were chiefly complaints by Flemings and Hainaulters of the men of London, Harwich and



vers Margerie etc. en les quex <sup>1</sup>cel Marg'<sup>1</sup> nad entre si noun par <sup>2</sup>W. Roller<sup>3</sup> a qi<sup>2</sup> William poyteuyn<sup>4</sup> frere Maud <sup>2</sup>qi heir etc.<sup>2</sup> qe<sup>5</sup> ceo ly<sup>5</sup> lessa a terme qe passe est.

*Scrop.* Nous portames vn assise de no. diss. de mesme les tenements de<sup>6</sup> mesme cely<sup>7</sup> <sup>8</sup>William de G.<sup>8</sup> et M. <sup>2</sup>sa femme<sup>2</sup> par quel assise nous recouerames mesme les tenements etc. et sumus entre par agarde du Court. iugement du br'.

*Pass.* Nostre frere feut seisi long temps auant <sup>9</sup>le temps de vostre<sup>9</sup> assise<sup>10</sup> et issint<sup>11</sup> est nostre accioun eigne<sup>12</sup> etc.<sup>13</sup>

*Scrop.* Nous r(ecouerames) vers vous mesmes etc.<sup>14</sup>

*Pass.* <sup>2</sup>En vostre assise<sup>2</sup> William Rouller<sup>15</sup> pleda oue vous com tenant <sup>16</sup>et feut tenant et noun pas<sup>16</sup> William <sup>17</sup>de G.<sup>17</sup> ne M. <sup>18</sup>et peut ensemble estier<sup>18</sup> qe le lees <sup>19</sup>feut fait<sup>19</sup> com nous auoms dit etc.<sup>13</sup> et<sup>5</sup> qe puis William Rouller<sup>15</sup> diss' Marg'<sup>20</sup> et Marg'<sup>21</sup> porta lassise vers<sup>2</sup> William Rouller<sup>22</sup> et noma William <sup>23</sup>de Goldington<sup>23</sup> et Maude<sup>24</sup> <sup>25</sup>qe le recouerir fuut<sup>25</sup> vers eux ou William Rouller<sup>15</sup> com<sup>26</sup> tenant etc.<sup>13</sup> Et William <sup>23</sup>de Goldington<sup>23</sup> et Maude<sup>27</sup> desclamerent et<sup>28</sup> cel recouerir ne nous oustera<sup>29</sup> pas de cesti<sup>30</sup> br.

*Scrop.* Ore<sup>31</sup> demaundoms iugement de vostre br' qest en<sup>32</sup> les degreez et vous auez conu<sup>33</sup> qun William Rouller<sup>34</sup> feut<sup>35</sup> seisi puis la seisine vostre frere ou nul br' <sup>36</sup>dentre ne<sup>13</sup> git<sup>36</sup> forsqe<sup>37</sup> en le post etc.<sup>38</sup>

*Pass.* La seisine William<sup>13</sup> Rouller<sup>38</sup> feut<sup>39</sup> defait par lassise<sup>40</sup> par qil il ne doit mye<sup>13</sup> estre nome etc.<sup>38</sup>

*Scrop.* Vous auez conu <sup>41</sup>qe nous recouerames et issint auet conu nostre<sup>41</sup> entre par iugement de<sup>42</sup> Court. iugement etc.<sup>43</sup>

*Pass.* Vous ne recouerastes forsqe<sup>37</sup> vostre primer estat qe vous auiez par le lees <sup>44</sup>cely qe tint<sup>44</sup> a terme qe passe est par quei nostre bref est assez bon.

*Scrop.* M.<sup>45</sup> porta lassise vers William Rouller<sup>15</sup> William Goldington<sup>23</sup> et Maude sa femme <sup>46</sup>les quex vindrent<sup>47</sup> et<sup>46</sup> firent<sup>48</sup> title et<sup>5</sup>

<sup>1-1</sup> ele P. M. T.    <sup>2-2</sup> Om. P.    <sup>3</sup> Petyuine F.    Petineu T.    <sup>4</sup> Potebien F.    Peyteuyn P.    Pet T.    <sup>5</sup> Om. T.    <sup>6</sup> uers P, T.    <sup>7</sup> ceux P, T.    <sup>8-8</sup> W. T.    <sup>9-9</sup> vostre recouerer par T.    <sup>10</sup> accion F.    <sup>11</sup> Add: et lessa etc par quei vous auet entre P, T.    <sup>12</sup> eyne P, T.    <sup>13</sup> Om. F, P.    <sup>14</sup> en vostre assise P.    <sup>15</sup> Roule F.    Raulyn P.    Robin T.    <sup>16-16</sup> et nent P.    <sup>17-17</sup> Goldyngtone F.    Gold P.    Om. T.    <sup>18-18</sup> et put estre ensemble P.    etc. possunt simul stare T.    <sup>19-19</sup> fut P. se fist T.    <sup>20</sup> M. P, T.    <sup>21</sup> ele P. M. T.    <sup>22</sup> Roule F.    Robin T.    <sup>23-23</sup> Goldyngtone F.    Golde P.    Galde T.    <sup>24</sup> Add: et F.    <sup>25-25</sup> oue lautre en lour bref et qe Marg. recouera P.    oue ly ou lour heirs et quod de illa disseisina M. recouera T.    <sup>26</sup> pleda com F, P, T.    <sup>27</sup> Add: sa femme T.    <sup>28</sup> en cel recouerer ou F. etc. P. etc. par T.    <sup>29</sup> ostereit P.    <sup>30</sup> cel P. nostre T.    <sup>31</sup> nous T.    <sup>32</sup> deinz T.    <sup>33</sup> Om. T.    <sup>34</sup> Roule F.    Raulyn P.    Aleyn T.    <sup>35</sup> Add: tenant et P.    <sup>36-36</sup> Om. T.    <sup>37</sup> Om. qe P    <sup>38</sup> Om. F, P, T.    <sup>39</sup> est T.    <sup>40</sup> disseisine P.    <sup>41-41</sup> vostre P.    <sup>42</sup> du T.    <sup>43</sup> du bref P, T.    <sup>44-44</sup> qi nauoit forsqe T.    <sup>45</sup> Marg. P, T.    <sup>46-46</sup> ou ils P.    <sup>47</sup> Add: en Court et disjoint T.    <sup>48</sup> furent T.

against Margery etc. into which this Margery has no entry save by William Rouller to whom William Poyteuyn, brother of Maud whose heir etc. who leased to him for a term that has expired.

*Scrope.* We brought an assize of novel disseisin for the same tenements against this same William of Goldington and Maud his wife, by which assize we recovered these same tenements etc., and we entered by award of the court. Judgment of the writ.

*Passeley.* Our brother was seised long time before the time of your assize, and thus our action is older etc.

*Scrope.* We recovered against you yourselves etc.

*Passeley.* In your assize William Rouller pleaded against you as tenant and he (actually) was tenant and (it was) not William of Goldington or Maud (who were tenants) and it may be true at the same time that the lease was made as we said etc. and that afterwards William Rouller disseised Margery and Margery brought the assize against William Rouller and named William of Goldington and Maud, (so) that the recovery was against them, or (against) William Rouller as tenant etc. And William of Goldington and Maud disclaimed, and that recovery shall not oust us of this writ.

*Scrope.* Now we pray judgment of your writ (because it) is within the degrees and you have admitted that one William Rouller was seised after your brother's seisin, in which case no writ of entry lies except *in le post* etc.

*Passeley.* The seisin of William Rouller was defeated by the assize, and therefore he ought not to be named etc.

*Scrope.* You have admitted that we recovered and thus you have admitted our entry by judgment of court. Judgment etc.

*Passeley.* You did but recover your original estate which you had by the lease of him who held for a term that has expired. Therefore our writ is good enough.

*Scrope.* Margery brought the assize against William Rouller, William of Goldington and Maud his wife. They came and made (their)

the Cinque Ports (*ibid.* 1307-13, p. 601; 1313-17, pp. 321, 322, 406-8; 1317-21, p. 301), but in 1314 an accusation of fraud was brought by a London merchant against several members of the Teutonic Hanse (*ibid.* 1313-17, pp. 224, 225). He died on February 3, 1319, leaving as his heir his son John (*Cal. inq. p.m.* vi, no. 186); another son, Richard, is mentioned in the inquisition, and a third, Laurence, had been killed in 1310 by Robert of Threlkeld (*Cal. Pat.* 1307-13, p. 288). In 1316 William of Goldington had

augmented the chantry of St. Mary in the church of St. Margaret, Thele, to celebrate divine service for his soul and for the souls of his ancestors and heirs (*ibid.* 1313-17, p. 434).

'Maude' is supplied from *F. P. T.* In 1319 William of Goldington left a widow named Joan; she was still living in 1324, when she complained that John de Crevequor and others had captured her at Goldington and taken her to Newbiggin near Tempsford, where they imprisoned her (*Cal. Pat.* 1321-24, p. 448).



desoient<sup>1</sup> qe William Rouller<sup>2</sup> tint<sup>3</sup> 4les tenements<sup>4</sup> 5a terme de sa vie du<sup>6</sup> lees William frere<sup>7</sup> Maude etc.<sup>8</sup> le qel William Rouller<sup>9</sup> aliena<sup>5</sup> en<sup>10</sup> fee a Margerie et W. Goldington<sup>11</sup> et Maude<sup>12</sup> partenoit<sup>13</sup> lalienacioun<sup>14</sup> en fee en<sup>15</sup> desheriteson<sup>16</sup> 17de Maude<sup>17</sup> entrerent<sup>18</sup> com bien lour<sup>19</sup> lust 20etc. et Margerie dit qe la ou il ad soppose et dient qe William nauoit estat qe a terme de vie il feut en son demesne com de fee et de droit prest etc. Et qe W. Goldington et Maude etc. com<sup>21</sup> tenantz<sup>21</sup> et issint<sup>20</sup> plederent a lassise prest<sup>21</sup> etc. Et troue feut qe William Rouller<sup>22</sup> auoit fee simple par qei agarde feut qe Margerie recouerast vers eux com disseisours et demaundoms iugement desicom le reuers de ceo qe vous sopposez par bref troue par verdit dassise a qei vous feustes partis si a cesti bref deuietz estre receu.<sup>23</sup>

II.<sup>24</sup>

W. Raulyn vist q W. de G. et M sa femme dem(erent) fraunc tenement pur ceo q W. fut son vileyn il entra ou W. et M. et Margerie pleda a lassise vers eux com vers disseisour et ceo title trie par assise ou troue fut par assise qe W. P. auoit fee symple par qei agarde fut qe Marg. recouerast vers eux com vers disseisours a quei vous fustes partie et demandoms iugement si vous deuez estre receu etc.

III.<sup>25</sup>

William Rob. vit ceo qe William Gald et Maud sa femme clam(erent) franctenement etc pur ceo qe W. G. fust son vileyn entra et ousta W. G. et Maud etc et issint plederent etc.

*Lassise* prise et ceo title oiee par Lassise ou troue fust qe W. P. auoit fee simple par qei agarde fut qe Marg. recouerast uers eux com uers disseisours et demandoms iugement de si com le reuers de ceo qe vous supposez qe vostre bref fut troue par verdit dassise *scilicet* a qi vous mesme fustes partye si a cesti bref estre receu etc.

IV.<sup>26</sup>

Entre.

William de Goldynge et Maud sa femme port(erent) bref dentre vers vne Marger(ie) supposant lentre par Wauter a qi William paituine frere Maude qi heir etc. ceo lessa a terme qe passe etc.

<sup>1</sup> *Om. T.*    <sup>2</sup> *Petyuin F. Peyteuyn P. P. T.*    <sup>3</sup> *aliena T.*    <sup>4-4</sup> *etc. P.*  
<sup>5-5</sup> *Om. T.*    <sup>6</sup> *et de le P.*    <sup>7</sup> *pere P.*    <sup>8</sup> *Om. F, P.*    <sup>9</sup> *Peyteuyn P.*  
<sup>10</sup> *les tenements en P, T.*    <sup>11</sup> *de G. P. Gald T.*    <sup>12</sup> *Add: sa femme T.*  
<sup>13</sup> *aperceurent F. aperceyuant P. apres T.*    <sup>14</sup> *cel alienacion P.*    <sup>15</sup> *a lour a*  
<sup>16</sup> *lor P.*    <sup>16</sup> *desheritaunce P.*    <sup>17-17</sup> *Om. P. M, T.*    <sup>18</sup> *entra T.*  
<sup>19</sup> *ly T.*    <sup>20-20</sup> *Et pur qe Williame de Roule vist qe William Goldyng' et Maude*  
*sa femme clamerent f(ranc) tenement et qe Williame G. fut son vileyn si entra il*  
*et ousta W. de Goldig' et Maude sa femme et ensi F.*    <sup>21</sup> *Om. F.*    <sup>22</sup> *Petyuin F.*  
<sup>23</sup> *respondu F. From here to the end P and T have other passages which are*  
*given below.*    <sup>24</sup> *From P.*    <sup>25</sup> *From T.*    <sup>26</sup> *From X.*

title and said that William Rouller held the tenements for the term of his life by the lease of William brother of Maud etc., which said William Rouller alienated in fee to Margery. And William of Goldington and Maud perceiving<sup>1</sup> that the alienation in fee (was) in disheritance of Maud, entered as they were well entitled to do etc. And Margery said that whereas he had supposed and said that William had no estate save for term of life, (in reality) he was (seised) in his demesne as of fee and of right, ready etc. And that William Goldington and Maud his wife etc. as tenants, and thus they pleaded to the assize. Ready etc. And it was found that William Rouller had fee simple, wherefore it was awarded that Margery recover against them as disseisors. And we pray judgment whether you ought to be received to this writ, since the reverse of what you suppose by your writ was found by verdict of (an) assize to which you were parties.

## II.

William Rouller saw that William of Goldington and Maud his wife claimed freehold because William was his (their ?) villain (when ?) he entered with William and Maud, and Margery pleaded to the assize against them as against disseisors. And that title was tried by the assize, when it was found by the assize that William Rouller had fee simple. Therefore it was awarded that Margery recover against them as against disseisors. And to that (assize) you were party, and we pray judgment whether you ought to be received etc.

## III.

William Rouller saw that William Goldington and Maud his wife claimed freehold etc. because William Goldington was his villain (he ?) entered and ousted William Goldington and Maud etc. And thus they pleaded etc.

The assize (was) taken and this title was heard by the assize, when it was found that William Rouller had fee simple. Therefore it was awarded that Margery recover against them as against disseisors. And we pray judgment whether (you ought) to be received to this writ, since the reverse of what you suppose (by) your writ was found by verdict of the assize, to wit, (one) to which you yourselves were party etc.

## IV.

### Entry.

William of Goldington and Maud his wife brought a writ of entry against one Margery, supposing the entry by Walter to whom William Poytevyn brother of Maud whose heir etc. (had) leased this for a term which has expired.

<sup>1</sup> Supplied from *P*.



*Scrop.* Nous recouerames ces tenemenz par assize de no. dis. vers mesme ces William et Maude issint sumes entre par iugement. Iugement de bref.

*Pass.* Longtemps auant cel recouerir nostre frere fust seisi et lessa issint nostre accion de eyne temps. Dautrepart en lassise vn William Rouller pleda com tenant et fust tenant et vostre rec(ouerir) vous mist en vostre primer estat.

*Scrop.* Ore auez conu la seisine W. Rouller peus la seisine vostre frere ou vostre bref serreit en le post iugement.

*Pass.* Sa seisine feust defet par Iugement par qey sa seisine ne abate pas nostre bref.

*Scrop.* En lassise W. Goldynge et Maude pled(erent) com tenantz et disoient qe Wauter Paituyne tynt a sa vie de lees William frere Maude le qel aliena en feo a Marg(erie) par qey ils entrerent et Marg(erie) dit qe Wauter auoit fee et ceo fust troue par verdit et Iugement sur ceo rendu et desicom le reuers de cesti Bref fust troue par verdit iugement si a cesti bref serez r(eceu).

67. LE DANEYS *v.* PAUNCEFOT.<sup>1</sup>I.<sup>2</sup>

Entre <sup>3</sup>*ad terminum qui preterit* lou le tenant ne fut tenant i(our du) bref purchase mes . . . et puis le tenant vient al . . . et le bref abate.<sup>3</sup>

Bryce <sup>4</sup>fitz Damoys<sup>4</sup> porta son bref dentre <sup>5</sup>*ad terminum qui preterit* vers Grymbaud le fitz Grombane<sup>5</sup> et demanda certain tenements etc.

*Scrop.* Rauf de Hengham feut tenant de ceux tenements iour du bref purchace prest etc.

<sup>1</sup> Reported by *C, F, G, M, R, X* (twice).    <sup>2</sup> From *M*. Compared with *F*.  
<sup>3-3</sup> ou le bref abati pur ceo qe il i auoit vn autre tenant iour du bref purchasee.  
*non obstante* qe le demandant dit qil fut tenant iour du plee *F*.    <sup>4-4</sup> le fitz Deneis *F*.    <sup>5-5</sup> vers Grumbald le fitz Grumbald *F*

*Scrope.* We recovered these tenements by assize of novel disseisin against these same William and Maud. Thus we entered by judgment. Judgment of the writ.

*Passeley.* Long before that recovery our brother was seised and leased, so that our action (dates) from a more ancient time. On the other hand in the assize one William Rouller pleaded as tenant and (actually) was tenant, and your recovery gave you your former estate.

*Scrope.* Now you have acknowledged the seisin of William Rouller, after the seisin of your brother, in which case your writ would be *in le post*. Judgment.

*Passeley.* His seisin was defeated by judgment, and therefore his seisin does not abate our writ.

*Scrope.* In the assize William Goldington and Maud pleaded as tenants and said that Walter Poytevyne held for his life by the lease of William, Maud's brother, who alienated in fee to Margery, wherefore they entered, and Margery said that Walter had fee and that was found by verdict, and thereupon judgment was given. And since the reverse of (what is alleged in) this (present) writ was found by verdict, judgment whether you will be received to this writ.

## 67. LE DANEYS *v.* PAUNCEFOT.

### I.

Entry *ad terminum qui preteriit*, where the tenant was not tenant on the day of the purchase of the writ, but (was later) and then the tenant came to (the bar) and the writ was abated.

Brice le Daneys<sup>1</sup> (the Dane) brought his writ of entry *ad terminum qui preteriit* against Grimbald the son of Grimbald Pauncefot<sup>2</sup> and demanded certain tenements etc.

*Scrope.* Ralph of Hengham<sup>3</sup> was tenant of these tenements on the day of the purchase of the writ. Ready etc.

<sup>1</sup> In 1318 Brice le Daneys, with others, broke the house of Edmund Passeley, who is frequently mentioned as an advocate in the Year Books, and was then a justice of assize (Foss, *Judges*, ii, 287), drove away the horses, oxen, cows and sheep from his lands in Rutlandshire and carried the corn, trampling down such as they did not take (*Cal. Pat.* 1313-17, p. 171). In 1322 he obtained letters of protection with a clause *nolumus* (*ibid.* 1321-24, p. 208).

<sup>2</sup> Grimbald Pauncefote held half a

knight's fee in Witton, Worcestershire, of the heirs of Hugh Mortimer in 1309 (*Cal. Close* 1307-13, p. 98). He died before June 2, 1314, leaving as his heir his brother Aimery (*Cal. inq. p.m.* v, no. 478); his wife Clemency survived him and was still living in 1326, when her land in Sok Daneys was taken into the King's hands for her default in a suit against Nicholas Bolevill (*Cal. Close* 1323-27, p. 658).

<sup>3</sup> Sir Ralph of Hengham died May 18, 1311 (*Chron. Edw. I and Edw. II* (Rolls Ser.), i, 270).



*Toud.* De puis qe vous estes mesmes ore tenant de nostre demande iugement si vous ne deuez ore respondre.

*Berr.* Est ceo issint com il dient etc.

*Toud.* Le iour qe nostre bref feut purchace le Roy feut en escoce qant ceux de la Chauncerie ne sauoient ou il feut et firent la Date de iij. symeynes et autre Date ne poioms auoir pur ceo qil ne volleint lour Date changer tanq' il sauoient<sup>1</sup> etc. E nous volloms auerer qe le iour qe le bref feut escripte. G. feut tenant.

*Scrop.* De puis qe nous volloms auerrer qe nous ne feumes nient tenant iour du bref purchace et vous ne poez mye ceo dedire iugement.

*Berr.*<sup>2</sup> Pur ceo qe vous ne poez dedire qe R. ne feut tenant iour du bref purchace et noun pas G. si agarde la Court qe vous ne preignez rien par vostre bref <sup>3</sup>mes en la mercy<sup>3</sup> et G. a dieu etc.

## II.<sup>4</sup>

Entre.

En Bref dentre

*Scrop.* Vn H. fust tenant iour de Bref etc.

*Toud.* Vous estes tenant hui ceo iour.

*Ber.* Donges est il issint qe H. fust tenant iour de bref purchace.

*Toud.* La date fust iij. simaynes auant le bref escrit pur ceo qe le Roi fust en Escoce et iour del Bref escrit vous fustes tenant prest.

*Herui.* Pur ceo qe vous ne poez dedire ceo si agarde court rien par vostre bref.

## III.<sup>5</sup>

Entre ou le bref fut abatu pur ceo qil ne fut pas tenant iour du bref purchace. mes puis yl fut tenaunt. *et hoc non obstante* etc.

Vne Beatrice le denays porta soun bref de entre et demanda certeinz tenemenz deuers G. Pauntec'.

*Scrop.* Sire vous dioms qe G. vers qi le bref est ore porte ne fut nent tenaunt ior du bref purchace. eynz vn Rauf. iugement du bref.

<sup>1</sup> *Add: ou F.*    <sup>2</sup> *Heruy F.*    <sup>3-3</sup> *Om. F.*    <sup>4</sup> *From X (second version).*  
<sup>5</sup> *From G.*

*Toudeby.* Since you yourselves are now tenant of our demand, judgment whether you ought not to answer now.

BEREFORD C.J. Is this as they say etc.?

*Toudeby.* On the day when our writ was purchased the King was in Scotland, when those of the chancery did not know where he was, and they made the date three weeks (earlier<sup>1</sup>), and we could not have another date because they would not change their date until they knew etc. And we are willing to aver that on the day when the writ was written Grimbald was tenant.

*Scrope.* Since we are willing to aver that we were not tenant on the day of the purchase of the writ, and you cannot deny this (our statement), judgment.

BEREFORD C.J. Since you cannot deny that Ralph and not Grimbald was tenant on the day of the purchase of the writ, this court awards that you take nothing by your writ but be in mercy and Grimbald goodbye etc.

## II.

### Entry.

In a writ of entry

*Scrope.* One Hengham was tenant on the day of (the purchase of) the writ.

*Toudeby.* You are tenant to-day.

BEREFORD C.J. Then is it so that Hengham was tenant on the day of the purchase of the writ?

*Toudeby.* The date was by three weeks earlier than the (day when) the writ (was) written, because the King was in Scotland. And on the day when the writ was written you were tenant. Ready etc.

STANTON J. Since you cannot deny this, this Court awards (that you take) nothing by your writ.

## III.

Entry where the writ was abated because he was not tenant on the day of the purchase of the writ. But afterwards he was tenant. And nevertheless etc.

One Brice le Daneys brought his writ of entry and demanded certain tenements against Grimbald Pauncefot.

*Scrope.* Sir, we tell you that Grimbald against whom the writ is now brought was not tenant on the day of the purchase of the writ, but one Ralph. Judgment of the writ.

<sup>1</sup> *I.e.* an earlier date, as to which they knew where the King had then been.



*Toud.* Vous estes ore tenaunt de ceus tenemenz. et meillor bref ne poet doner. qar autre tenant ne poet doner forqe vous mesmes. iugement si le bref ne seit asset bon.

*Scrop.* Le bref fut vne foyz maueys. par quei il ne put estre bon aore iugement.

*Heruy.* Vous ne poet my meyntenir vostre bref. par quei agarde la court qe vous ne preygnet ren.

*Et hoc fuit mirum. quia casus talis.* G. auoyt lesse les tenemenz a .R. a terme de vye auaunt soun deces. G. entra .B. entendi. qe R fut mort. et ne fut pas. et purchacea sur G. *vt supra.*

*Et nota.* qe si G. fut auenu par reson de purchaz puis le bref purchace le bref vst este bon.

#### IV.<sup>1</sup>

##### Cosinage.

Luce le Deneyz. porta son bref de Cosinage vers Grimbard le fitz .G. et demanda vn mes etc. et fit soun resort de Elienore pur ceo qele morust saunz heir de soun cors etc. a I. com a vncle et heir frere Giffret pere Elyenore etc.

*Herle.* Ele ne deit a cesti bref estre receu etc. qe nous vous dioms qe au iour de cesti bref purchace si fut sire Raufe etc. tenant de mesmes les tenemenz qe sunt ore en demande iugement etc.

*Toud.* Vous estes tenant de nostre demande et meqe cesti bref abati ieo ne puisse autre bref auer ne autre tenant par quei il me semble qe cesti bref est asset bon.

*Herle.* Vostre bref veut *precipe quod reddat* le quel *reddat* ad relacion al iour du bref purchace issint qe le tenant deit la demande rendre a ceu temps e il ne fut pas tenant par ount la demande ne p(ut) il rendre.

*Toud.* Nous ne poms dedire qe R. ne fut tenant etc.

*Ber.* Donqe conisez vous ausicom il dient par quei agard la court qe vous ne preinget rens etc.

*Cuius contrarium videbatur in termino Michaelis anno iij. inter Robertum Power.*

<sup>1</sup> From R.

*Toudeby.* You are now tenant of these tenements, and you cannot give<sup>1</sup> a better writ. For you cannot give<sup>1</sup> another tenant save yourselves. Judgment whether the writ be not good enough.

*Scrope.* The writ was once bad, and therefore it cannot be good now. Judgment.

STANTON J. You cannot maintain your writ, and therefore the Court awards that you take nothing.

And that seemed strange, for the facts of the case were these. Grimbald had leased the tenements to Ralph for term of life. Before his decease Grimbald entered. Brice understood that Ralph was dead (which he was not) and purchased (the writ) against Grimbald as above.

And note that if Grimbald had got (to the tenements) by reason of purchase since the purchase of the writ, (then) the writ would have been good.

#### IV.

##### Cosinage.

Brice le Daneys brought his writ of cosinage against Grimbald the son of Grimbald and demanded one messuage etc., and made his resort from Eleanor because she died without heir of her body etc. to J . . . . as to an uncle and heir, brother of Geoffrey father of Eleanor etc.

*Herle.* He<sup>2</sup> ought not to be received to this writ etc., for we tell you that on the day of the purchase of this writ Sir Ralph of Hengham was tenant of these same tenements which are now in demand. Judgment etc.

*Toudeby.* You are tenant of our demand, and albeit that this writ be abated I could not have a different writ or a different tenant. Therefore it seems to me that this writ is good enough.

*Herle.* Your writ runs *precipe quod reddat*, the which *reddat* relates to the day of the purchase of the writ, so that the tenant ought to (have) restored the demand at that time, and he was not tenant so that he could not restore the demand.

*Toudeby.* We cannot deny that Ralph was tenant etc.

BEREFORD C.J. Then you make conusance according to their statement. Therefore the Court awards that you take nothing etc.

The contrary was seen in Michaelmas term of the third year in the case of Robert Power.

<sup>1</sup> *I.e.* suggest.

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<sup>2</sup> The text speaks of 'Lucy' and consequently has 'she.'

2 H



V.<sup>1</sup>

Nountenue.

Brice le Daneis porta bref de cosinage vers Grimbaud de Pauerte.

*Herle.* Ior du bref porte R. de H. fu tenant iugement du bref.

*Toud.* Nous ne pouns dedire qe R ne fut tenant ior du bref porte mes vous estes tenant hui ceo ior.

Pur sa conisance le bref abati.

VI.<sup>2</sup>

Nota le tenantz dit qe sire Raufe de Hingham fut seisi des tenemenz le iour du bref purchace et est mort : iugement du bref.

*Et tamen non cassatur breve non habito respectu* qil ne pout sa demande rendre.

## Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 146 recto. Cambridgeshire.  
Written by Burnedisshe.

Bricius le Daneys petit versus Grymbaldum filium Grymbaldi Pauncefot vnum mesuagium ducentas et quaterviginti acras terre decem acras prati triginta acras bosci et quatuordecim solidatas redditus cum pertinenciis in Hildrichesham De quibus Ela la Daneys consanguinea predicti Bricij cuius heres (*sic*) fuit seisisita in dominico suo vt de feodo die quo obiit etc.

Et Grymbaldus per attornatum suum venit Et dicit quod non debet eidem Bricio inde ad hoc breue respondere. Quia dicit quod ipse die impetacionis istius breuis non tenuit predicta tenementa set quidam Radulphus de Hengham eisdem die et anno tenuit tenementa illa vnde petit iudicium de breui etc.

Et Bricius non potest hoc dedicere.

Ideo consideratum est quod predictus Grymbaldus eat inde sine die Et predictus Bricius nichil capiat per breue suum set sit in misericordia pro falso clam(io) etc.

<sup>1</sup> From X (first version).

<sup>2</sup> From C.

## V.

## Non-tenure.

Brice le Daneys brought a writ of cosinage against Grimbald Pauncefot.

*Herle.* On the day when the writ was brought Ralph of Hengham was tenant. Judgment of the writ.

*Toudeby.* We cannot deny that Ralph was tenant on the day when the writ was brought, but you are tenant to-day.

Upon his conusance the writ was abated.

## VI.

Note the tenant said that Sir Ralph of Hengham was seised of the tenements on the day when the writ was purchased and is dead (now). Judgment of the writ.

And yet the writ was not<sup>1</sup> quashed, no regard being had (to the fact) that he could not have restored his demand.

## Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 146 recto. Cambridgeshire.  
Written by Burnedisshe.

Brice le Daneys (the Dane) demands against Grimbald the son of Grimbald Pauncefot one messuage, two hundred and eighty acres of land, ten acres of meadow, thirty acres of wood and 14s. worth of rent with the appurtenances in Hildersham of which Ela la Daneys (the Dane) cousin of the said Brice, whose heir (he is), was seised in her demesne as of fee on the day on which she died etc.

And Grimbald comes by his attorney, and says that he ought not to answer the said Brice in this matter to this writ, for he says that on the day of the purchase of this writ he did not hold the said tenements, but one Ralph of Hengham held those tenements on the said day and in the said year. And he demands judgment of the writ etc.

And Brice cannot deny this.

Therefore it was considered that the said Grimbald go hence without day, and the said Brice take nothing by his writ, but be in mercy for his false claim etc.

<sup>1</sup> This is a characteristic mistake.



68. ERDINGTON v. BURNEL.<sup>1</sup>I.<sup>2</sup>

*Entre ad terminum qui preteriit.*

Henri le fiz H. de Herdintone porta son bref dentre *ad terminum qui preteriit* vers Edward Burnel et demaunda le maner de Welintone.

Edward voucha agarrantie Roger le Springhose qe garrantist et dit par

*Malm.* Vous ne poez actioun auer qe Henri vostre pere qi heir vous estes nous effeffa de ceux maner a nous et a nos heirs par ceo fet qe cy est et oblige li etc. a la garrantie si nous fusoms en plede etc vous seretz lye etc. iugement etc.

*Denum.* Nous voloms auerer nostre bref etc.

*Malm.* Est ceo vostre fet etc.

*Denum.* Le maner fut en la seisine nostre pere qe de ceo fut seisi en soun demeine com de fee et de dreit e vous dioms qe tel ior tel an. a

<sup>1</sup> Reported by *C, G, P, R, T, Z.*

<sup>2</sup> From *R.*

## 68. ERDINGTON v. BURNEL.

## I.

*Entry ad terminum qui preterit.*

Henry the son of Henry of Erdington<sup>1</sup> brought his writ of entry *ad terminum qui preterit* against Edward Burnel<sup>2</sup> and demanded the manor of Wellington.

Edward vouched to warranty Roger Springehose who warranted and said by

*Malberthorpe.* You cannot have (an) action, for Henry your father whose heir you are enfeoffed us of that manor, to ourselves and our heirs, by this deed which is here, and bound himself etc. to warranty. If we were impleaded (by a stranger), you would be bound etc. Judgment etc.

*Denom.* We are willing to aver our writ etc.

*Malberthorpe.* Is this your deed etc.?

*Denom.* The manor was in the seisin of our father who was seised thereof in his demense as of fee and of right, and we tell you

<sup>1</sup> In 1309 the Treasurer and Barons of the Exchequer were ordered to allow to Henry son of Henry of Erdington £126 3s. 4d., which had been levied from John de la Mare, tenant of the land of Walter of Dunstanvill, who had been surety for that much of a debt of 5000 mks. owed to King Henry III by Thomas of Erdington. The King had granted to Giles, the son and heir of Thomas, that he and his heirs should render 100s. yearly to the King until the debt was paid, and these terms had been duly kept by Giles, Henry, and Henry (*Cal. Close* 1307-13, p. 164). The latter Henry was assessor and collector of the 15th and 20th in Warwickshire in 1313 (*Cal. Pat.* 1313-17, p. 50), and commissioner of array in the same county in 1315 (*ibid.* p. 351). He was appointed in 1314 to inquire whether the sheriff and keepers of the peace had acted with diligence (*ibid.* p. 129), and was himself keeper of the peace and of the Statute of Winchester from 1314 to 1318 (*ibid.* pp. 109, 123, 482; 1317-21, pp. 185, 289). He acted as a commissioner of oyer and terminer in 1317 (*ibid.* 1317-21, p. 97) and is

mentioned as a justice to deliver Warwick gaol in 1314 and 1321 (*ibid.* 1313-17, p. 226; 1317-21, p. 565).

<sup>2</sup> Edward Burnel, whose father Philip had died in 1294, proved his age and obtained seisin of his inheritance in December 1307 (*Cal. inq. p.m.* iii, no. 194; *Cal. Close* 1307-13, p. 11), and in 1313 he received a grant of tallage in his manor of Bidford in Warwickshire, if it was at any time royal demesne and wont to be tallaged (*ibid.* p. 519). Besides the lands which had belonged to his father, the nephew and heir of Edward I's great chancellor, he inherited certain tenements in Oxford from Master William Burnel, but these he released in 1314 to Balliol College in accordance with his kinsman's will (*Cal. Pat.* 1313-17, p. 130); and in the same year he gave land in mortmain to Worcester Cathedral from his manor of Kidderminster (*ibid.* p. 132). He died on the Eve of St. Bartholomew 1315, leaving as his heir his sister Maud Lovel; his wife Aline survived him (*Cal. inq. p.m.* v, no. 611; *Cal. Pat.* 1313-17, p. 554).



solusburx a les fres menors nostre pere apromta de mesme cesti Roger .Li. li. dargent a paier a teu ior etc. e ly lessa le maner tant qe qa cel ior de la paie et ly fit vne charte simple et la bailla a vn frere menour a garder en owel mayn. issint qe sil ne payast etc. qe le maner demuroit a Roger et a ces heirs a touz iors solom la purport de ceste escrit qe fut fet de cost du les nostre pere auant le iour de la paie vint a cesti Roger de Salopburz a les freres menors et luy tendit ceux deners il reseiore ne les voleit issint qe nostre pere morust auant le iour etc. dount les executours nostre<sup>1</sup> vindrent au iour etc. e ly tenderent largent. et il le refusa pus nous mesme com heir nostre pere. mesme le iour ly tendimes largent et il le refusa. pus nous auom tendu souent largent il ne le voleit reseiore. e vncore sumes prest a paier. et issint nauoit il vnqes estat en le maner si noun a terme qe passe est prest etc.

E mustra escript qe ceo testmoigna.

E pus fut la charte lue e le escript ensembl(e).

E furent de vne date.

*Malm.* Coniset la charte ou dedites.

*Denum.* Nous la conisoms en la forme *ut supra* e pur ceo conisez lescript.

*Malm.* Nous nauom pas mester a conustre lescript. ne dedire qe nous most(roms) fet simple et saunz condicion le qel fet vous auet conu e nentendoms pas qe a nul escrit de cest qest inpertinent a ceo pled deuoms respoudre.

*Heydown.* Vous mestr(ez) auant fet simple et nous le fasoms condicional par lescriit.

*Herle.* Vostre bref veut *ad terminum qui preteriit* ou nous mustroms auant fet qe testmoigne fee le quel vous conusetz et a uoider le si mettet auant vn escrit qe ne fet pas mension et de nul terme nest garr(aunt) de vostre bref eins par le decouenaunt fet de cest iugement si a ceo fet qe ne fet pas mencioun du terme nest garr(aunt) al bref deuom respondre.

<sup>1</sup> *Suppl.* pere.

that on such day in such year at Shrewsbury at the Minor Friars<sup>1</sup> our father borrowed from this same Roger £51 of money<sup>2</sup> to pay on such day etc. and leased to him the manor until that day of payment, and made for him a simple<sup>3</sup> charter and bailed it to a Minor Friar to keep in impartial hand, so that if (our father) did not pay etc. the manor should remain to Roger and to his heirs for ever, according to the purport of this writing which was made alongside of the lease. Our father before the day of the payment came to this Roger of Shrewsbury<sup>4</sup> at the Minor Friars' and tendered him his money. He would not receive it, so that our father died before the day etc. Then the executors of our father came on the day etc. and tendered him the money, and he refused it. Then we ourselves as our father's heir tendered him the money on the same day and he refused it. Since then we have often tendered the money, but he would not receive it. And we are still ready to pay. And thus he never had (an) estate in the manor except for a term which has expired. Ready etc.

And he showed a writing which witnessed that.

And then the charter was read and the writing together (with it).

And they were of one date.

*Malberthorpe.* Do you acknowledge the charter or do you deny (it)?

*Denom.* We acknowledge it in the form (as above), and, therefore, (do you) acknowledge the writing (?).<sup>5</sup>

*Malberthorpe.* We need not acknowledge the writing or deny (it), for we show a deed (which is) simple and without condition, and that deed you have acknowledged. And we do not think that we ought to answer to any writing as to that which is irrelevant to this plea.

*Hedon.* You put forward a deed (which is) simple and we, by the writing, make it conditional.

*Herle.* Your writ runs, *ad terminum qui preterit*, and we show a deed which witnesses (our) fee (and) which you acknowledge. And to avoid (the deed) you put forward a writing which does not make mention of any term, and is not a warrant of your writ, except by way of counter-covenant<sup>6</sup> thereof made. Judgment whether we ought to answer to that deed<sup>7</sup> which does not make mention of the term and is not a warrant of the writ.

<sup>1</sup> *I.e.* Franciscans.

<sup>2</sup> Or, *silver* (the French term *argent* may have either meaning).

<sup>3</sup> *I.e.* unconditional.

<sup>4</sup> This seems unnecessary.

<sup>5</sup> The French text may be translated

either by an imperative or by an interrogative form.

<sup>6</sup> This seems the best translation of *decouenaunt*.

<sup>7</sup> Meaning the additional writing.



*Scrop iust(ice).* Il ount conu la charte solum la condicioun *ut supra* etc. qar auant le iour de la paie la charte fut de nule value pur ceo qe la seisine fut condicionel qe si l'argent vst este paie al iour vous ne vsetz iames pris estat par la charte mes nous<sup>1</sup> vous diount il qe les executors etc. vous tenderent l'argent au iour etc. issint qe ceo nest pas lur defaute qe vous nestes paie etc. e ceo tendunt il de auerer et ore ount l'argent pret etc. par quei il me semble qe la charte nest de nule value.

*Et habent diem in crastino Purificacionis etc.*

*Scrop.* Par my ceste charte vous ne poet nous barrer *ut supra* qar veez cy vostre fet qe testmoigne qe vous entrates solom le purport de cest escrit iugement etc. e si vous volet dedire pret etc.

*Herle.* Al auerement nauendrez mie qar si vous fusez receu al auerement ceo couendreit estre par force de la endenture qe vous mettez auant. mes ore cest endenture ne testmoigne mie vostre dit qe nous entrames a terme einz si proue le reuers de uostre dit iugement. si a nul auerement deuēt attendre par vertue de ceo fet qil nest mye garr(aunt) de vostre dit etc. ne en countre la charte vostre auncestre ne poez a nul auerement auenir qe testmoigne qe nous entrames simpl(ement).

*Scrop.* Sire par my ceste charte ne p(oet) il estat prendre si issi ne fut qe la dette ne fut paye a iour assis Mes par taunt qe nous dioms qe la paie fut tend(u) auant le iour et au iour en tant il nous semble qe ceste charte ne fut vnqes pleine et il ne prit vnqes estat par my la charte qil met auaunt etc. et ceo proue l'indenture qest son fet demeine iugement si par ceo fet nous put il barrer.

## II.<sup>2</sup>

Entre *ad terminum qui preterit* des terez lessez en Morgage porte par le heir le lessor vers celi qe auoit estat par le heir celi a qi etc. apres ceo qil auoit tendu les deners *congruis loco et tempore*.

Henri lefitz Henri de Erdung(e) porta soun bref dentre devers Edward Pernel et demanda le maner de B. en le quel mesme cesti nad entre si noun pus le lees qe Henri de Herdunge de ceo enfyt a Roger de Spryngehuse a terme qe passe est.

<sup>1</sup> *Sic.*

<sup>2</sup> From G.

SCROPE J. They have acknowledged the charter subject to<sup>1</sup> the condition (as above) etc., for before the day of the payment the charter was of no value because the seisin was conditional. For if the money had been paid on the (appointed) day you would never have taken estate by the charter. (Now<sup>2</sup>), however, they tell you that the executors etc. tendered you the money on the day etc., so that it is not their fault that you are not paid etc. And they offer to aver this, and they have now the money ready etc. Therefore it seems to me that the charter is of no value.

And they have their day on the Morrow of Purification etc.

Scrope. By that charter you cannot bar us (as above), for see here your deed which witnesses that you entered according to the purport of this writing. Judgment etc., and if you will deny it ready etc.

Herle. To the averment you cannot get, for if you were received to the averment that would have to be on the strength of the indenture which you put forward. But now that indenture does not witness your statement that we entered for (a) term, but it proves the reverse of your statement. Judgment whether you ought to attain to any averment, by virtue of this deed which is not a warrant of your statement etc. Nor can you get to any averment against the charter of your ancestor which witnesses that we entered simply.<sup>3</sup>

Scrope. Sir, by this charter he cannot take estate except in case the debt had not been paid on the appointed day. But forasmuch as we say that the payment was tendered before the day and on the day, it seems to us that this charter was never complete<sup>4</sup> and he never took estate by the charter which he puts forward etc. And this is proved by the indenture which is his own deed. Judgment whether he can bar us by that deed.<sup>5</sup>

## II.

Entry *ad terminum qui preterit*, brought by the heir of the lessor, for lands leased in mortgage, against him that had estate, by the heir of him to whom etc., after he had tendered the money in a convenient place and (at a convenient) time.

Henry the son of Henry of Erdington brought his writ of entry against Edward Burnel and demanded the manor of Wellington into which the same (Edward) has no entry save after the lease which Henry of Erdington thereof made to Roger of Springehose for a term that has expired.

<sup>1</sup> This seems the meaning of *solum* in this passage.

<sup>2</sup> This seems to supply the word which ought to stand for *nous*.

<sup>3</sup> *I.e.* without condition.

<sup>4</sup> *I.e.* the condition having been fulfilled.

<sup>5</sup> Meaning the charter.



Edward voucha a garrantie Rogger le fitz R. de Spryng(ehuse) qentra et<sup>1</sup> garranti et dit par

*Malm.* Qe ceo maner fut en ascun temps en la seisine H. dergunge pere mesme cesti H. qore porte cesti bref qi hors de sa seisine dona ceo maner a Roger de Spryngehose nostre vncle et ces heirz et obligea ly et ces heirz a la garrantie par ceste charte a Roger et a ces heirz. et myst auaunt la charte. dunt si nous fussoms enplede dune estraunge etc. iugement si vous pusset ren demander.

*Denom.* Sire nous vous dioms qe H. Spring(ehuse) nostre pere aprompta dil dit Rogger vne somme de deners cest a sauier vi. lyuerez a paier certeyn ior et sur cel ly lessa le maner auaundit a tenyr tanqe au ior auaundit. issint qe sil ne ly paiast ceus deners a ceo ior. qe le maner demurreit a R. et a ces heirz solom la purporte dune charte de feffement qe fut baille en ouele mayn a vn frere Menor de Salusbyry agarder. et veyet icy vn escrit qe ceo testmoigne. et myst auaunt vn escrit du Couenaunt a la court. et vous dioms qe auaunt ior de la paye leuaundit H. vous tendy les deners en pleyn Counte de S. en presence de plusours et vous les refusates et pus H. deuya deuaunt ior par qei ces executours vyndrent et vous tenderent les deners. vous les refusates et nous mesmes cum heir mesme cesti H. vous auoms souent tendu les deners et vncore foo(m)s. et auoyt les deners prest a la bare. et issi vous dioms qe H. lessa mesme cel maner a terme.

*Berr.* Vostre escrit testmoigne mult de ceo qe vous auet dit. mes il ne testmoigne mye qe laseisine fut liuere solom la forme de cesti escrit.

*Malm. a Denom.* Responez a ceste charte.

*Denom.* Qei responez vous a cesti fet.

*Malm.* Nous nauoms pas mester a respondre a vostre escrit. car nous auoms mys auaunt charte simple en sey. par la quele vous nous garr(antiriez) deuers estraung(ers). et pur ceo responez si ceo seit le fet vostre auncestre ou noun.

*Berr.* Il conust la charte en certeyne forme *vt supra* et dit qe ceste charte fut baille en ouwele mayn a vn frere menor par vertue de cesti escrit *vt supra* iugement.<sup>2</sup>

*Et sic pendet.*

<sup>1</sup> *Corr.* en (?)

<sup>2</sup> This seems added by mistake.

Edward vouched to warranty Roger the son of Ralph Springehose who entered into (the) warranty and said by

*Malberthorpe.* That manor was at one time in the seisin of Henry of Erdington father of this same Henry who now brings this writ. And he out of his seisin gave this manor to Roger of Springehose our uncle and (to) his heirs, and by this charter bound himself and his heirs to the warranty (in favour of) Roger and his heirs. (And he put forward the charter.) Hence, if we were impleaded by a stranger etc. Judgment whether you can demand anything.

*Denom.* Sir, we tell you that Henry Erdington,<sup>1</sup> our father, borrowed from the said Roger a sum of money, to wit, £6, to pay on a certain day, and thereupon leased to him the aforesaid manor, to hold until the aforesaid day, so that if he did not pay him that money on that day, then the manor would remain to Roger and to his heirs, according to the purport of a charter of feoffment which was bailed into an impartial hand, to a Minor Friar of Shrewsbury, to keep. And see here a writing which witnesses this. (And he put forward, to the court, a writing of the covenant.) And we tell you that before the day of the payment the aforesaid Henry tendered to you the money in the full county of Shropshire in the presence of several persons, and you refused it. And afterwards Henry died before the (appointed) day, wherefore his executors came and tendered to you the money. You refused it. And we ourselves as heir of the said Henry have often tendered to you the money and still do so. (And he had the money ready at the bar.) And thus we tell you that Henry leased this same manor for (a) term.

BEREFORD C.J. Your writing witnesses much of what you have said. But it does not witness that his seisin was delivered according to the form of this writing.

*Malberthorpe to Denom.* Answer to this charter.

*Denom.* What do you answer to this deed?

*Malberthorpe.* We have no need to answer to your writing, for we have put forward a charter (which is) simple in itself (and) by which you ought to warrant us against strangers. And therefore answer whether this be the deed of your ancestor, or no.

BEREFORD C.J. He has acknowledged the charter in a certain form (as above) and said that this charter was bailed into an impartial hand, to a Minor Friar, by virtue of this writing (as above).<sup>2</sup>

And thus the cause is pending.

<sup>1</sup> This is supplied for 'Springehose,' an obvious mistake.

<sup>2</sup> We omit the word 'Judgment,' which seems added by mistake.



III.<sup>1</sup>Entre <sup>2</sup>*ad terminum qui preterit*.<sup>2</sup>

Henri <sup>3</sup>de Ardington<sup>3</sup> porta bref de Entre vers Edward Burnel et dit en les queux il nad entre si noun par Roger de s. a qi I.<sup>4</sup> pere le demandaunt lessa a terme qe passe est.

E.<sup>5</sup> vocha a garantie R.<sup>6</sup> qe vint<sup>7</sup> et dit qe<sup>8</sup> le pere le demandaunt li enfeffa <sup>9</sup>de ceux tenemenz<sup>9</sup> en simple <sup>10</sup>et obligea etc.<sup>10</sup>

Et mist auant charte qe ceo tesmoigneit.<sup>11</sup>

<sup>12</sup>*Denom.* Le<sup>13</sup> lees se fist a terme qe passe est <sup>14</sup>prest etc.<sup>14</sup>

*Toud.* Est ceo le fait vostre auncestre.

Et fut chace<sup>12</sup> <sup>15</sup>a ceo respondre.<sup>15</sup>

*Denom.* Nous ne pooms dedire le fait. mes vous dioms qe I.<sup>4</sup> nostre pere apromta de R.<sup>16</sup> de s. xx.<sup>17</sup> li. a paier a certain iour et li lessa la tere pur ceux deners taunqe a <sup>18</sup>certain iour.<sup>18</sup> <sup>19</sup>issint qe<sup>19</sup> sil paiast les deners a cel iour qe la tere li deuerait reuertir. et sil ne paiast qe la tere deuerait demurer vers Roger. et cele charte fust baile en owele main <sup>20</sup>*scilicet* en la main<sup>20</sup> vn frere a saluer taunqe a ceo iour. et de rendre a nostre pere<sup>21</sup> si les deners fusent paies et si noun. a Roger. auant quel iour nostre pere tendi les deners et il les refusa et <sup>22</sup>pus R. murust.<sup>22</sup> pus<sup>23</sup> ses executours tendirent les deners et il les refusa et nous mesmes tendimes souent les deners et vnquore <sup>24</sup>fesoms et veez ci<sup>24</sup> les deners prest<sup>25</sup> issint fust<sup>26</sup> le lees fet a terme qe passe est et<sup>27</sup> la liuere de seisine prest etc.

Et mist auant vne Endenture qe ceo<sup>28</sup> testmoigneit et<sup>26</sup> qe la charte fust baile en owele main <sup>29</sup>*vt supra*.<sup>29</sup>

*Toud.* La charte est conue et est simple <sup>30</sup>en sei<sup>30</sup> et veult garrantie. iugement si par nul fait<sup>31</sup> costeyn<sup>32</sup> <sup>33</sup>pussez<sup>33</sup> la charte voider.

*Denom.* Qe la liuere de seisine fust condicionele<sup>34</sup> par my cel fait et issint<sup>35</sup> a terme qe passe est prest etc.<sup>36</sup>

<sup>1</sup> From *P.* Compared with *C, T.* <sup>2-2</sup> *Add:* ou charte en fee fut mys auant *C. Om. T.* <sup>3-3</sup> derdignito(n) *C.* de Ardyngtone *T.* <sup>4</sup> Ion *C.* Iohan *T.* <sup>5</sup> Edward *T.* <sup>6</sup> Roger *C. Om. T.* <sup>7</sup> *Add:* et gar(antist) *C, T.* <sup>8</sup> *Add:* Iohan *T.* <sup>9-9</sup> *Om. C.* <sup>10-10</sup> *Om. C, T.* <sup>11</sup> *Add:* oue clause de garrantie *C.* *Add:* par my qe la charte il obligea luy et sez heires a la garrantie iugement etc. <sup>12-12</sup> *Om. C.* <sup>13</sup> nous voloms auerier nostre bref qe le *T.* <sup>14-14</sup> iugement *T.* <sup>15-15</sup> *Om. C.* par la court a respondre al fet *T.* <sup>16</sup> Roger *C, T.* <sup>17</sup> xxi. *C, T.* <sup>18-18</sup> tel iour *C.* ceo etc. *T.* <sup>19-19</sup> et *C.* <sup>20-20</sup> a *C.* <sup>21</sup> *Add:* a cel iour *C.* <sup>22-22</sup> *Add:* auant le terme et *C.* morust pus *T.* <sup>23</sup> et *T.* <sup>24-24</sup> *Om. T.* <sup>25</sup> *Add:* a la barre *T.* <sup>26</sup> *Om. C, T.* <sup>27</sup> *Add:* issint *T.* <sup>28</sup> Cancelled in *C.* <sup>29-29</sup> a vn frere *C.* en la mayn vn frere *T.* <sup>30-30</sup> *Om. C.* en seit *T.* <sup>31</sup> l(ett)re *T.* <sup>32</sup> costeyn *C.* costeyne fait *T.* <sup>33-33</sup> deit el *C.* <sup>34</sup> *Add:* et *C.* <sup>35</sup> *Add:* le lees *C.* <sup>36</sup> *Add:* et sic ad iudicium *C.* et sic ad iudicium etc. *T.*

## III.

*Entry ad terminum qui preterit.*

Henry of Erdington brought a writ of entry against Edward Burnel and said, 'into which he has no entry save by Roger of Springehose to whom Henry, father of the demandant, leased for a term that has expired etc.'

Edward vouched to warranty Roger, who came and said that the father of the demandant (had) enfeoffed him of these tenements in (fee) simple and bound etc.

And he put forward a charter which witnessed this.

*Denom.* The lease was made for a term that has expired. Ready etc.

*Toudeby.* Is this the deed of your ancestor?

And he was driven to answer to that.

*Denom.* We cannot deny the deed. But we tell you that Henry our father borrowed from Roger of Springehose £20, to be paid on a certain day, and he leased to him the land for that money until such<sup>1</sup> day, so that if he paid the money on that day, the land should revert to him, and if he did not pay, the land should remain to Roger. And that charter was bailed into an impartial hand, to wit, into the hand of a friar, to be kept until that day, and to be given up to our father if the money was paid, and to Roger if (it was) not. Before that day our father tendered the money and he refused it. And afterwards (our father) died, then his executors tendered the money and he refused it. And we ourselves have often tendered the money, and still do so. And see here the money ready. Thus the lease was made for a term that has expired and (so was<sup>2</sup>) the livery of seisin. Ready etc.

And he put forward an indenture which witnessed this, and (witnessed) that the charter was bailed into an impartial hand, as above.

*Toudeby.* The charter is acknowledged and is simple in itself and contains warranty. Judgment whether you can annul the charter by any collateral deed.

*Denom.* That the livery of seisin was conditional by this deed, and thus (the lease<sup>3</sup>) for (a) term that has expired. Ready etc.

<sup>1</sup> Supplied from *C*.

<sup>2</sup> Supplied from *C* and *T*

<sup>3</sup> Supplied from *C*.



IV.<sup>1</sup>

*Entre ad terminum qui preteriit.*

En vn bref dentre *ad terminum qui preteriit* en les queux le tenant nad entre sinoun par vn tiel a qi son piere etc le tenant voucha mesme cesti par qi son entre fut suppose le quel vyent et garrantist et dist qe le piere demandant (*sic*) lui enfeffa etc.

Et mist auant vn charte etc.

Le demandant dist qil ne poeit dedire la charte mes il dist mes il dit (*sic*) qe son piere appromta xxx livres de lui a paier vn certain iour et lessa ses terres pur ses deners etc. issint qe sil ne paiast a tiel iour qe la terre demurreit etc a touz iours *et econtra* qil recust sa terre et dist qe la charte fust baille en owele mayn etc. a quel iour son piere lui tendi la paie et il la refusa et puis la mort il lui ad tendi souent et vnqore fait et veez ci les deners et tendi dauerrer qe la liuere de seisin par la charte fust sur lauandit condicion et monstra vn endenture qe testm(oigneit) la condicioun iugement etc.

Et lautre demanda iugement desicom il auoit conu la charte qe fust simple si par nul fait costeyn deit la charte voider.

*Et sunt super hoc ad iudicium.*

*Ideo quere sed credo quod in huiusmodi casibus* qant il tendi les deners al iour assis il purra entrer et mesqe lautre porta lassise deuers lui qil purra meintenir son entre en countre lui sanz tender les deners mes sil soit par voye daccioun il lui couendra toutz iours tendre les deners etc.

**Note from the Record.**

De Banco Roll 195a, Mich. 6 Edw. II., membr. 95 recto. Shropshire.

Written by Luding'.

Henricus filius Henrici de Erdingtone petit versus Edwardum Burnel duas partes manerii de Wellintone cum pertinenciis Et uersus Matill(idem)

<sup>1</sup> From Z.

## IV.

Entry *ad terminum qui preteriiit*.

In a writ of entry *ad terminum qui preteriiit* 'into which the tenant has no entry save by one such to whom his father' etc., the tenant vouched the same man by whom his entry was supposed (to be), and he came and warranted and said that the father of the demandant had enfeoffed him etc.

And he put forward a charter etc.

The demandant said that he could not deny the charter but he said that his father had borrowed £30 from (the tenant) to be paid on a certain day and leased his lands for the money etc., so that if he did not pay on such day the land should remain etc. forever and if he did, that he should recover his land, and he said that the charter was bailed into an impartial hand etc. And on that day his father tendered him the payment and he refused it, and after the death (of the father the demandant himself) has often tendered him and still does so, 'and see here the money,' and he tendered the averment that the livery of seisin by the charter was on the aforesaid condition, and he showed an indenture which witnessed the condition. Judgment etc.

And the other prayed judgment whether he ought to avoid the charter which was simple by any collateral deed, since he had confessed the charter.

And as to this they are awaiting judgment.

Therefore *quaere*, but I believe that in cases of this kind when he tendered the money on the appointed day he can enter, and even if the other bring an assize against him, he will be able to maintain his entry against him without tendering the money. But if it be by way of action<sup>1</sup> he must at all times<sup>2</sup> tender the money etc.

## Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 95 recto. Shropshire.  
Written by Luding'.

Henry the son of Henry of Erdington demands against Edward Burnel two parts of the manor of Wellington<sup>3</sup> with the appurtenances, and against

<sup>1</sup> *I.e.* if he brings an action instead of entering.

<sup>2</sup> The text has 'on all days' or 'always' (*toutz iours*).

<sup>3</sup> The manor of Wellington was granted in 1211 to Thomas of Erdington; the jurors at an inquisition taken in 1284 stated that it was a reward for services rendered at the Court of Rome at the time of the Interdict. It was

usurped after his death by Ellen daughter of Llewellyn Prince of Wales, but was recovered before 1229 by Giles of Erdington, who obtained a grant of a fair and market there in 1244. He was still in possession in 1255, but the manor had passed before June 1, 1283, to Sir Hugh Burnel, the grandfather of the defendant (Eyton, *Shropshire*, ix, 42-44).



**Note from the Record**—*continued.*

que fuit vxor Philippi Burnel terciam partem manerii predicti cum pertinenciis vt ius et hereditatem suam et in quas iidem Edwardus et Matill(is) non habent ingressum nisi post dimissionem quam Henricus de Erdington pater predicti Henrici filii Henrici cuius heres ipse est, inde fecit Rogero Springehose ad terminum qui preteriit et que post terminum illum ad prefatum Henricum filium Henrici reuerti debent etc.

Et Edwardus et Matill(is) per attornatum suum veniunt Et predictus Edwardus de tenementis versus eum petitis alias vocauit inde ad warantum Rogerum filium Radulphi Springehose Et predicta Matillis de tenementis uersus eam petitis similiter vocauit inde ad warantum Edwardum filium Philippi Burnel, qui quidem Rogerus et Edwardus modo veniunt per Henricum de Hexstone attornatum ipsius Edwardi Et eis warantizant predicta tenementa separatim etc. Et idem Edwardus filius Philippi vocat vlterius inde ad warantum predictum Rogerum filium Radulphi Springehose. Habeat eum in crastino Purificacionis beate Marie per auxilium curie, et sum-(monetur) in eodem Comitatu etc.

Et Rogerus filius Radulphi qui war(antizauit) predicto Edwardo defendit ius suum qu(od) etc. Et dicit quod predictus Henricus nichil iuris clamare potest in predictis tenementis. Dicit enim quod Henricus de Erdington pater predicti Henrici cuius heres ipse est, dedit concessit et carta sua confirmauit cuidam Rogero Springehose auunculo istius Rogeri nunc cuius heres ipse est, predictum manerium de Wellington cum pertinenciis habendum et tenendum ipsi Rogero et heredibus suis imperpetuum et obligauit se et heredes suos ad war(antizandum) etc. ipsi Rogero et heredibus suis etc per cartam ipsius Henrici patris etc quam profert et que hoc testatur Et petit iudicium ex quo iste Henricus filius et heres predicti Henrici per factum predictum tenetur ei predicta tenementa war(antizare) si ab alio implacitetur, si accio ei competere possit etc.

Et Henricus dicit quod per predictam cartam ab accione sua precludi non debet nec idem Rogerus ius seu feodum clamare potest in predictis tenementis per predictam cartam. Dicit enim quod predictus Henricus pater etc. mutuo recepit de predicto Rogero quinquaginta et vnam Libras certis terminis soluendas etc. et pro maiori securitate concessit ei predictum manerium tenendum vsque ad certum terminum inter eos statutum, et fecit ei predictam cartam que tradita fuit cuidam fratri Hugoni de Bowelwas custodiendam et liberandam alteri ipsorum Henrici et Rogeri si predictus Henricus in solucione dicte pecunie ad terminum statutum defuisset (*sic*) iuxta formam cuiusdam conuencionis inde facte inter eosdem Henricum et Rogerum per quoddam scriptum indentatum cuius vnam partem predictus Henricus profert in hec verba.

Hec est conuencio facta inter Henricum de Erdington Militem ex vna parte et Rogerum de Springehose dominum de Longenolre ex altera scilicet quod predictus Henricus mutuo recepit quinquaginta et vnam libras argenti eidem Rogero soluendas in crastino annunciacionis beate

**Note from the Record—continued.**

Maud widow of Philip Burnel the third part of the said manor with the appurtenances, as his right and inheritance and into which the said Edward and Maud have no entry save after the lease which Henry of Erdington, father of the said Henry the son of Henry, whose heir he is, thereof made to Roger Springehose for a term which has expired and which after that term ought to revert to the said Henry the son of Henry etc.

And Edward and Maud come by their attorney, and the said Edward, as to the tenements demanded against him, did before now vouch to warranty Roger the son of Ralph Springehose, and the said Maud as to the tenements demanded against her did likewise vouch in this matter to warranty Edward the son of Philip Burnel, and the said Roger and Edward come now by Henry of Hexstone, attorney of the said Edward, and warrant them the said tenements severally etc. And the said Edward the son of Philip thus further vouches to warranty in this matter the said Roger the son of Ralph Springehose. Let him have him on the morrow of Purification of Blessed Mary, by aid of the Court. And let him be summoned in the said county etc.

And Roger the son of Ralph who warranted the said Edward defends his right when etc. And he says that the said Henry can claim no right in the said tenements, for he says that Henry of Erdington, father of the said Henry whose heir he is, did give, grant, and by his charter confirm to one Roger Springehose, uncle of this present Roger whose heir he is, the said manor of Wellington with the appurtenances, to be had and held to him Roger and to his heirs forever, and bound himself and his heirs to warrant etc. the said Roger and his heirs etc., by a charter of the said Henry the father etc. which he (Roger) proffers and which witnesses this. And he demands judgment whether this Henry, son and heir of the said Henry, can have an action, since by the said deed he is bound to warrant him (Roger) the said tenements if he were impleaded by someone else etc.

And Henry says that he ought not to be precluded from his action by that charter, nor can the said Roger claim (any) right or fee in the said tenements by the said charter. For he says that the said Henry father etc. did borrow from the said Roger £51 to be paid in certain instalments (*terminis*) etc., and for the greater security he granted to him the said manor to be held until a certain term fixed between them, and he made for him the said charter which was handed over to one brother Hugh of Bowelwas, to be kept safely and delivered to one of the two, Henry and Roger, (namely, to Roger) if the said Henry should have made default in the payment of the said money at the appointed time, according to the form of a covenant made between the said Henry and Roger in the said matter by an indented writing of which the said Henry proffers one part, in the following words :

This is the covenant made between Henry of Erdington, knight, of one part and Roger of Springehose, lord of Longnor, of the other part, to wit, that the said Henry did borrow fifty-one pounds of silver, to be paid to the said Roger on (March 26, 1282) the morrow of the Annunciation of Blessed Mary in the tenth year of the reign of King Edward, but



**Note from the Record**—*continued.*

Marie anno regni Regis Edwardi decimo Ita tamen quod si contingat predictum Henricum in solucione dicte pecunie termino predicto in toto vel in parte deficere. quod predictus Rogerus permaneat feoffatus de toto manerio de Welingtone sicut plenius continetur in carta feoffamenti predicti Henrici que quedam (*sic*) carta in equali manu tradita fratri Hugoni de Bowelwas ad domum fratrum minorum. Et si predictus Henricus predictam pecuniam predicto Rogero termino predicto persoluat predictus Rogerus in solucione predicte pecunie allocationem faciet de octo et decem libris et decem solidis argenti predicto Henrico Et predictum manerium restituet predicto Henrico si solucionem faciet de predicta pecunia die predicto. In cuius rei testimonium presenti scripto ad modum Cyrographi confecto alternatim sigilla sua apposuerunt. Datum apud Welintone die sabati proxima post festum sancti Barnabe Apostoli anno regni regis Edwardi Nono.

Et dicit quod ante diem solucionis etc predictus Henricus pater etc die Iouis proxima post festum sancti Gregorii pape Anno regni Regis E patris domini Regis nunc decimo apud Salope in pleno Comitatu in presencia Prioris de Wombrugge Iohannis de La leghe Hugonis le Fiz Aer Ricardi de leghtone Thome de La leghe Iohannis de Wythyford et aliorum optulit prefato Rogero auunculo etc. predictam pecuniam pro predicto Manerio rehabendo secundum formam conuencionis etc et post mortem ipsius Henrici patris etc Iuo de Sultone et alii executores testamenti ipsius Henrici apud Salope ad diem solucionis statutum etc scilicet ad prefatum crastinum annunciacionis beate Marie optulerunt ei predictos denarios etc et similiter iste Henricus nunc sepius optulit prefato Rogero predictos denarios et illos adhuc offert hic in Curia etc. Et dicit quod ipse paratus est verificare per patriam quod predictus Rogerus intrauit in predicto Manerio virtute predicti scripti, Tenendo iuxta formam et condicionem eiusdem scripti, et quod predicta pecunia oblata fuit predicto Rogero auunculo etc per ipsum Henricum patrem etc et per executores suos post mortem eiusdem Henrici in forma predicta : per quod predictus Rogerus auunculus etc nichil habuit in predictis tenementis nisi terminum annorum etc : vnde petit iudicium etc et quod predictus Rogerus respondeat ad predictum scriptum etc.

Et Rogerus dicit quod ex quo predictus Henricus superius cogn(oscit) predictam cartam esse factum predicti Henrici patris etc que quidem Carta simplex est. et absque condicione etc racione cuius carte iste Henricus nunc etc filius et heres eiusdem Henrici teneretur ei warantizare etc vt predictum est, non habet necesse in hoc casu ad predictum scriptum respondere Et petit Iudicium etc. Et si curia considerauerit quod ad hoc respondeat, paratus est respondere etc.

Dies datus est eis hic ad prefatum terminum de audiendo iudicio suo etc saluis partibus racionibus suis hinc inde dicendis etc.

**Note from the Record**—*continued.*

so, that if it should happen that the said Henry should make default in the payment of the said money on the said term, in the whole or in part, then the said Roger shall remain enfeofed of the whole manor of Wellington as is more fully contained in a charter of feoffment of the said Henry which charter (is) handed over into an impartial hand, to Brother Hugh of Bowelwas at the House of the Minor Friars. And if the said Henry will pay the said money to the said Roger on the said term, then the said Roger shall make to the said Henry an allowance of eighteen pounds and ten shillings of silver in the payment of the said money, and shall restore to the said Henry the said manor, if he shall have made the payment of the said money on the said day. In witness whereof they have both put their seals to the present writing made in the form of a chirograph. Given at Wellington on (June 14, 1281) the Saturday next after the feast of S. Barnabas the Apostle, in the ninth year of the reign of King Edward.

And he says that before the day of payment etc. the said Henry the father etc., on (March 14, 1282) the Thursday next after the feast of S. Gregory the Pope, in the tenth year of the reign of King Edward father of our Lord the present King, at Shrewsbury in the full county, in the presence of the Prior of Wombridge, John de la Leghe, Hugh Fitz-Aer, Richard of Leighton, Thomas of the Leghe, John of Wythyford, and others, offered to the said Roger, uncle etc., the said money for having back the said manor according to the form of the covenant etc., and after the death of the said Henry the father etc., Ives of Sultone and other executors of the will of the said Henry at Shrewsbury on the fixed day of payment etc., to wit, on (March 26, 1282) the said morrow of the Annunciation of Blessed Mary, offered him the said money etc., and similarly this Henry now (demandant) has several times (*sepius*) offered to the said Roger the said money and does still offer (it to him) here in the Court etc. And he says that he is ready to aver by the country that the said Roger entered in the said manor by virtue of the said writing, (the manor) to be held according to the form and condition of the said writing, and that the said money was offered to the said Roger, the uncle etc., by the said Henry the father etc., and by his executors after the death of the said Henry, in the said form; therefore the said Roger the uncle etc. had nothing in the said tenements save a term of years etc. And as to this he prays judgment etc., and that the said Roger answer to the said writing etc.

And Roger says that he has no need in this case to answer to the said writing, since the said Henry did acknowledge above that the said charter is the deed of the said Henry the father etc., and (since) that charter is simple and without condition, etc., and by reason of that charter this Henry now (demandant) etc., son and heir of the said Henry, is bound to warrant him etc., as was said before. And he prays judgment etc. And if the court should consider that he must answer to this, he is ready to answer etc.

A day was given them on the said term to hear their judgment etc., saving to the parties their arguments to be stated here in this matter etc.



**Note from the Record**—*continued*.

Postea ad diem illum predictus Rogerus filius Radulphi fecit se esso-  
n(iari) uersus predictum Henricum de predicto placito, Et habuit diem per  
esson(iatorem) suum hic ad hunc diem scilicet in crastino sancti Iohannis  
Baptiste proximo sequenti. Et modo veniunt partes predictae per attornatos  
suos. Et idem Rogerus bene cognoscit predictum scriptum esse factum  
predicti Rogeri auunculi etc et quod predictum manerium deuenit in seisinam  
eiusdem Rogeri per formam conuencionis in predicto scripto contentam (*sic*)  
set dicit quod predictus Henricus nichil clamare potest in predictis tenementis  
per predictam conuencionem. Dicit enim quod idem Henricus pater etc  
preter predictas quinquaginta et vnam libras in predicta conuencione notatas,  
recepit de prefato Rogero auunculo etc alias summas pecunie per particulas  
soluend(as) sub condicione qua prius etc videlicet viginti et tres libras vna  
vice et triginta et octo libras octo solidos et octo denarios alia vice Et dicit  
quod postmodum durante termino predicto, idem Henricus pater etc recepit  
de prefato Rogero centum libras et manerio predicto (*sic*) Itaque in seisina  
suo existente per formam conuencionis supradicte : predictus Henricus pater  
etc dedit concessit et carta sua confirmauit prefato Rogero Auunculo etc.  
predictum manerium cum pertinenciis, habendum et tenendum prefato  
Rogero et heredibus suis imperpetuum pro predictis centum libris Et obligauit  
se et heredes suos ad warantizandum etc per cartam ipsius Henrici patris  
etc quam profert et que hoc testatur, et dicit quod predictus Henricus vt  
heres predicti Henrici patris etc tenetur eidem Rogero predicta tenementa  
per cartam predictam warantizare etc. Et petit Iudicium vt prius, si predictus  
Henricus predicta tenementa petere possit etc.

Et Henricus bene cognoscit predictam cartam etc set dicit quod per  
cartam illam ab accione sua que ei competit in hac parte repelli non debet,  
Dicit enim quod ipsa carta est illa eadem carta que per formam conuencionis  
supradicte predicto fratri Hugoni de Bowelwas tradita fuit custodienda vt  
predictum est Et hoc pretendit verificare etc Et ex quo predictus Rogerus  
cognoscit predictum scriptum etc in quo continetur certa condicio tradicionis  
carte predictae, sicut predictum est, petit iudicium etc.

Et Rogerus dicit quod predicta carta quam ipse nunc profert etc non est  
eadem carta predicto fratri Hugoni tradita et liberata, Immo alia in seisina  
predicti Rogeri auunculi etc. infra terminum conuencionis predictae per  
prefatum Henricum de Erdington facta Et de hoc ponit se super patriam.

Et Henricus similiter.

Ideo preceptum est vicecomiti quod venire faciat hic in octabis sancti  
Martini xii etc per quos etc Et qui nec etc Quia tam etc.

**Note from the Record**—*continued.*

Afterwards on that day the said Roger the son of Ralph had himself essoined against the said Henry in the said plea, and he had a day by his essoiner here at this day, to wit on (June 25, 1313) the morrow of S. John the Baptist next following. And now come the said parties by their attorneys, and the said Roger fully admits that the said writing is the deed of the said Roger, uncle etc., and that the said manor came into the seisin of the said Roger by the form of the covenant contained in the said writing, but he says that the said Henry can claim nothing in the said tenements, under the said covenant. For he says that the said Henry, father etc., besides the said fifty-one pounds noted in the said covenant, received from the said Roger uncle etc., other sums of money in detail (*per particulas*), to be paid on condition as before etc., to wit, at one time twenty-three pounds and at another time thirty-eight pounds eight shillings and eight pence. And he says that afterwards during the said term the said Henry the father etc. received from the said Roger one hundred pounds and while the said manor was thus in (Roger's) seisin according to the form of the said covenant, the said Henry the father etc. did give, grant, and by his charter confirm to the said Roger the uncle etc., the said manor with the appurtenances, to be had and held to the said Roger and his heirs forever for the said one hundred pounds, and he bound himself and his heirs to warrant etc., by a charter of the said Henry the father etc., which he puts forward and which witnesses this. And he says that the said Henry, as heir of the said Henry the father etc., is bound by the said charter to warrant to the said Roger the said tenements etc. And he prays judgment as before, whether the said Henry can demand the said tenements etc.

And Henry fully acknowledges the said charter etc., but he says that by that charter he ought not to be refused his action to which he is entitled in this matter, for he says that that charter is that same charter which by the form of the said covenant was handed over to the said Brother Hugh of Bowelwas, to be kept as was said before, and this he offers to aver etc. And since the said Roger acknowledges the said writing etc., in which is contained a certain condition of handing over the said charter, as was said before, he prays judgment etc.

And Roger says that the said charter which he now puts forward etc. is not the same charter handed over and delivered to the said Brother Hugh, but another (charter) made by the said Henry of Erdington during the seisin of the said Roger uncle etc., within the term of the said covenant. And as to this he puts himself upon the country.

And Henry likewise.

Therefore the Sheriff was commanded that he cause to come here on the octaves of Martinmas twelve etc. by whom etc. and who are neither etc. Because both etc



69. PENLEGHE v. THE ABBOT OF BEC HELLOUIN.<sup>1</sup>*Ad terminum qui preteriit.*

*Hedoun.* La ou il suppose qil lessa a terme qe passe est il lessa en fee prest etc.

*Roth.* Si vous volez auer lauerement vous dirrez en fee et nent a terme.

*Hedoun.* Ieo pose qil lessa primes a terme et p(u)s ly fist vne ch(a)r(t)e de feffement, ieo pus dire qil lessa en fee. vnquore ne pus ieo pas dire qil ne lessa a terme.

*Herle ad idem.* En ceo cas il dirra qil lessa en fee saunz plus dire. et couent al d(emaun)dant dire a terme et nent en fee.

*Et sic fec(eru)nt.*

**Note from the Record.**

De Banco Roll 195a, Mich. 6 Edw. II., membr. 128 verso. Wiltshire.  
Written by Hales.

Ricardus filius Saueri de Penleghe per Willelmum de Troubrigge attornatum suum petit uersus Gilbertum Abbatem de Becco Herlewyni quinque acras terre decem acras prati et decem acras pasture cum pertinenciis in Westbury. vt ius et hereditatem suam, et in quas idem Abbas non habet ingressum nisi post dimissionem quam Sauerus de Penleghe pater predicti Ricardi cuius heres ipse est, inde fecit Roberto quondam Abbati de Becco Herlewyni. predecessori predicti Abbatis ad terminum qui preteriit et que post terminum illum ad prefatum Ricardum reuerti debent etc.

Et Abbas per Thomam de Mortone attornatum suum venit. Et dicit quod predictus Ricardus nichil Iuris clamare potest in predictis tenementis racione predicta, quia dicit quod cum ipse per breue suum supponit predictum Sauerum predicta tenementa cum pertinenciis dimisisse predicto Roberto Abbati predecessori etc. ad terminum etc: idem Sauerus dimisit eidem

<sup>1</sup> From P.

69. PENLEGHE *v.* THE ABBOT OF BEC HELLOUIN.*Ad terminum qui preterit.*

*Hedon.* Whereas he supposes that he leased for (a) term that has expired, he leased in fee. Ready etc.

*Ro(stone).* If you want to have the averment you will say in fee and not for term.

*Hedon.* I put it that he leased first for (a) term and then made (for) him a charter of feoffment. (In that case) I can say that he leased in fee, (and) yet I cannot say that he did not lease for (a) term.

*Herle* (to the same effect). In this case he will say that he leased in fee, without saying more; and the demandant must say 'for term and not in fee.'

And so they did.

**Note from the Record.**

De Banco Roll 195a, Mich. 6 Edw. II., membr. 128 verso. Wiltshire.

Written by Hales.

Richard the son of Sear of Penleghe,<sup>1</sup> by William of Troubrigge, his attorney, demands against Gilbert, Abbot of Bec Hellouin,<sup>2</sup> five acres of land, ten acres of meadow, and ten acres of pasture, with the appurtenances, in Westbury, as his right and inheritance, into which the said Abbot has no entry save after the lease which Sear of Penleghe, father of the said Richard, whose heir he is, thereof made to Robert, sometime Abbot of Bec Hellouin, predecessor of the said Abbot, for a term which has expired, and which after the said term ought to revert to the said Richard etc.

And the Abbot comes by Thomas of Mortone, his attorney, and says that the said Richard can claim no right for the said reason in the said tenements, for he says that whereas by his writ he supposes that the said Sear leased the said tenements with the appurtenances to the said Robert the Abbot, predecessor etc., for (a) term etc.,—the said Sear leased the said tenements

<sup>1</sup> Richard of Penleghe was warden of the lands formerly belonging to the Templars and William of Langton, Bishop of Coventry and Lichfield, till 1311, when he was ordered to deliver them to Geoffrey of the Lee (*Cal. Close* 1307-13, p. 382). In 1324 he was said to have carried away from Stokenchurch, Oxon., the goods belonging to James of Puttenham (*Cal. Pat.* 1324-27, p. 65).

<sup>2</sup> In 1308 William of Pont l'Evêque was admitted to be proctor-general and attorney in England for the Abbey of Bec Hellouin, with power to appoint a

deputy, at the instance of Gilbert the Abbot (*Cal. Pat.* 1307-13, pp. 50, 301); this appointment was renewed in 1314 and in 1318 (*ibid.* 1313-17, p. 104; 1317-21, p. 70). Gilbert was still abbot in January 1319, when a wandering monk named Ralph of Rounceville was arrested and delivered to William of Pont l'Evêque in accordance with his petition (*ibid.* 1317-21, p. 268), but he died or resigned before August 15 following, on which day his successor, Abbot Reynald, nominated Ralph of Hemenville and Walter of Bray his attorneys (*ibid.* p. 389).



**Note from the Record—continued.**

Roberto Abbati predicta tenementa in feodo etc. Et de hoc ponit se super patriam.

Et Ricardus similiter.

Ideo preceptum est vicecomiti quod venire faciat hic a die sancti Hillarii in xv dies xii etc. per quos etc. Et qui nec etc. ad recognoscendum etc. quia tam etc.

70. LAMBERD AND OTHERS *v.* FITZBERNARD.<sup>1</sup>I.<sup>2</sup>

Nota ou cely qe ne fut my party au plee dit qil fut tenaunt et pria qe nul iugement se fit en desheritaunce de ly. et fut dit par *Berr. vt patet in fine.*

Ion de Bledel(awe) et ces deus parceners porterent bref devers Thomas le fitz Bernard qe fyt defaute apres som(ounce) au ior dil graunt Cape returne Thomas fit autre foiz defaute par qei I. de B. et ces parceners prierent auer seisine de tere. suruynt vn Robert de Churlond et dit qe T. nauoyt vnqe ren en ceus tenemenz. fee. dreit. ne frauntenement. ne seisi ne fut. mes il dyt. qun lauerenz fut seisi de ceus tenemenz ior du bref purchase. qe de mesme ceus tenemenz enfeffa mesme cesti Robert. ensi est il ore tenaunt de ceus tenemenz. et prie qe nul iugement se face en preiudice de ly etc.

*Stoner.* Nous port(oms) nostre bref vers T. et vous nestes my partie a nous et vous ne dites point qe vous futes tenaunt ior du bref purchase mes vn lauerenz, par qei nous demaundoms iugement. si vous deuet nostre dreit delaier.

*Scrop.* Et nous iugement desicom T. ren nauoyt ior du bref purchase. Mes vn lauer(en)z qi de ceus tenemenz nous enfeffa si de nostre frauntenement en disheritaunce de nous par la defaute T. qe ren nauoyt deuet a iugement aler.

*Wesc. ad idem.* Robert de Churlond nad ren mespris de ceo qil purchasa de Lauerenz pendant cel plee. Car lauerenz nest pas partie au plee.

*Stoner.* Si vous seiet oste. vostre rescuuerir est done a la commune ley. Et dautrepart le vicomte ad testmoigne qe T. fut som(onee). et qil ad pris la tere .T. et vous nestes my partie a nous par qei nous demaundoms iugement *vt supra.*

<sup>1</sup> Reported by *G, P, R, X.*

<sup>2</sup> From *G.*

**Note from the Record**—*continued*.

to the said Robert the Abbot in fee etc. And as to this he puts himself upon the country.

And Richard likewise.

Therefore the sheriff was commanded that he cause to come here on the quindene of S. Hilary twelve etc. by whom etc. and who are neither etc. to find etc. because both etc.

70. LAMBERD AND OTHERS *v.* FITZBERNARD.

## I.

Note that one who was not a party to the plea said that he was tenant and prayed that no judgment be made to his disinheritance. And it was said by BEREฟอร์ด C.J.—as appears at the end of the report.

John of Bledlow and his two parceners brought a writ against Thomas FitzBernard who made default after summons; on the day when the grand *Cape* was returned Thomas again made default, therefore John of Bledlow and his parceners prayed to have seisin of the land. There intervened one Robert of Shir lond and said that Thomas never had anything in these tenements, fee, right, or freehold, nor was he seised. But he (Robert) said that one Lawrence was seised of these tenements on the day when the writ was purchased, and of these same tenements he enfeofed this same Robert, thus he is now tenant of these tenements, and he prays that no judgment be made to his prejudice etc.

*Stonore*. We bring our writ against Thomas and you are not a party to us and you do not say that you were tenant on the day when the writ was purchased, but (you say that) one Lawrence (was). Therefore we pray judgment whether you ought to delay our right.

*Scrope*. And we (pray) judgment whether you ought to proceed to judgment as to our freehold, to our disinheritance, by the default of Thomas who had nothing, since Thomas had nothing on the day when the writ was purchased, but one Lawrence, who enfeofed us of these tenements.

*Wescote* (to the same effect). Robert of Shir lond committed no misprision by purchasing from Lawrence while this plea was pending, for Lawrence is not a party to the plea.

*Stonore*. If you be ousted, your recovery is given at the common law, and on the other hand the Sheriff has certified that Thomas was summoned and that he took the land of Thomas, and you are not a party to us. Therefore we pray judgment (as above).



*Berr.* Robert ne perdra my sa tere si la veet defendre dil hure qil est venuz a temps.

Lendemeyn Ion et ces parceners furrent noun suyz par quei etc.

## II.<sup>1</sup>

Entre.

<sup>2</sup>Def(aute) apres def(aute) ou le d(emaun)daunt prie seisine de tere. suruint 1. qi nul iugement etc. pur ceo qe celi qi fit defaute etc. naueit vnqes riens en les tenemenz etc. et le d(emaun)daunt fut noun sui.<sup>2</sup>

Si moun  
tenaunt  
a terme  
daunz  
perd ma  
tere par  
defaute et  
le demaun-  
daunt  
eyt lyuere  
de seisine:  
quere si  
ieo pus  
scier les  
bledz  
cressaunz  
sur mesme  
la tere.

Robert<sup>3</sup> le fiz lambert de blethelowe<sup>4</sup> porta vn bref dentre vers Thom(as) le fiz Bertram qi fit defaute apres defaute le d(emaun)daunt pria seisine de tere <sup>5</sup>sur ceo vint<sup>5</sup> vn <sup>6</sup>Th(o)n de schirle<sup>6</sup> et dit qi vn Robert fuit seisi de mesme les tenemenz le iour du bref purchace issint qe meme ceci Th(o)m(as) vers qi etc. nauoit. le iour de bref purchace, ne vnque puis, renz en les tenemenz le qel Robert nous enfeffa de mesme les tenemenz des queus nous sumus hui cele iour tenant et prioms qe nul iuggement seit fete sur la defaute Th(o)m(as)<sup>7</sup> qi ne fuit pas tenant etc de nous ouster de nostre franct(enement) de puis qe nous voloms auerer nostre dist et prest sumus de trouer la suerte de<sup>8</sup> r(espoundre) des issuez en le mene temps.

*Denom.* Nous nauoms forqe apleder oue cely vers qi nous auoms porte nostre bref le quel nous ne veoms pas en Court einz fet defaute iugement.

*Pass.* Nous veiemus. cest terme. qe vne feme qi<sup>9</sup> a autri volunte. vient<sup>10</sup> ci<sup>11</sup> en court par bref de co(uen)a(n)t et conisseit le dr(oit) de mesme<sup>11</sup> les<sup>11</sup> tenemenz et rendi etc. et celi<sup>12</sup> en qi persone. le feo et le

<sup>1</sup> From *P.* Compared with *R.* <sup>2-2</sup> *Om. R.* <sup>3</sup> Roberd *R.* <sup>4</sup> Bledelowe *R.*  
<sup>5-5</sup> suruint *R.* <sup>6-6</sup> I. de C. *R.* <sup>7</sup> T. *R.* <sup>8</sup> e *R.* <sup>9</sup> Add: tynt *R.* <sup>10</sup> vint *R.*  
<sup>11</sup> *Om. R.* <sup>12</sup> cele *R.*

BEREFORD C.J. Robert shall not lose his land if he wants to defend it, because he came in time.

On the morrow John and his parceners were non-suited, wherefore etc.

## II.

### Entry.

Default after default where the demandant prayed seisin of the land. There intervened one who (asked that) no judgment etc. because he that made default etc. never had anything in the tenements etc. And the demandant was non-suited.

John Lamberd of Bledlow<sup>1</sup> brought a writ of entry against Thomas the son of Bernard<sup>2</sup> who made default after default. The demandant prayed seisin of the land. Thereupon came one Robert of Shir lond and said that one Robert was seised of these same tenements on the day of the purchase of the writ, so that Thomas against whom etc. had nothing in the tenements on the day of the purchase of the writ or ever since. That Robert enfeofed us of these same tenements, of which we are tenant this day. And we pray that upon the default of Thomas who was not tenant etc. no judgment be made to oust us of our freehold, since we are willing to aver our statement and are ready to find surety to answer for the issues in the meantime.

If my tenant for a term of years loses my land by default and the demandant has livery of seisin : query if I can reap the corn growing on the same land.

*Denom.* We have not to plead save with him against whom we brought our writ, and him we do not see in court but he makes default. Judgment.

*Passeley.* We have seen this term that a woman who (held) at another's will came here, into Court, by writ of covenant, and made conusance of the right of those same tenements, and rendered etc. ; and

<sup>1</sup> John Lamberd is mentioned as a creditor of Edmund of Marney in the Close Roll of 1315 (*Cal. Close* 1313-18, p. 231).

<sup>2</sup> Thomas the son of John Fitz Bernard made proof of his age on the Sunday before Whitsuntide 1311, and received the lands which had been held by his grandfather, Ralph Fitz Bernard, who died in 1306 (*Cal. inq. p.m.* iv, no. 387 ; v, no. 286 ; *Cal. Close* 1307-13, pp. 301, 310). In 1313 he settled his manor of Kingsdown in Kent on himself and his wife Bona, with remainder, should they be childless, to Bartholomew of Badlesmere (*Cal. Pat.* 1307-13, p. 551). A settlement of the manor of Tonge had been made at the time of their marriage, which took place during

the life-time of Ralph Fitz Bernard (*Cal. inq. p.m.* iv, no. 387). In March 1323 Thomas Fitz Bernard was excepted from the order to the magnates to set out against the Scots (*Cal. Close* 1318-1323, p. 700), and he died at York on December 18, leaving as his heir his son John (*Cal. inq. p.m.* vi, no. 442). Before his death he had demised the manor of Tonge to Bartholomew of Badlesmere, but Bona protested that it had been done against her will, and that she had never altered her estate. An inquisition taken on Wednesday after St. Gregory's Day found in her favour (*ibid.* ; *Cal. Close* 1327-30, p. 276), and she was seised of the manor when she died, early in 1334 (*Cal. inq. p.m.* vii, no. 606).



Dycon.

Item  
quere si  
ieo puse  
desturber  
le vic-  
(omte)  
de liuerer  
la seisine.  
gar qant  
lautre est  
entre par  
tel iuge-  
ment ieo  
pus vser  
lassise de  
nouele  
disseisine.

dr(oit) et le fraunct(enement) repp(oseient) vient<sup>1</sup> sur la reconisaunce<sup>2</sup> et chalang(ea) la fin et mustre<sup>3</sup> la manere de sa tenance a la court et celi tendist de auerer <sup>4</sup>et trou(er)a<sup>4</sup> seurete etc. et fut receu<sup>5</sup> auxi de ceste part del houre qe nous sumus tenans etc. et Th(o)m(as)<sup>6</sup> le fiz Bertram vnqe estat nauoit en les tenemenz. iuggement si par sa defaute<sup>7</sup> pussez de nostre tenance ouster E de autre part mes qe vous r(ecoueriez) s(ei)s(ine) par iuggement fet sur la defaute Th(o)m(as)<sup>6</sup> etc. Ih(o)n<sup>8</sup> rehauereit<sup>9</sup> sa s(ei)s(ine) par bref<sup>10</sup> de<sup>10</sup> deceite.

*Berr.* Uolez lauerement.

*Denoun.* Ieo ne puce pas estre partie. anul auerement qant ali qar il nest pas nome en le original.

*Berr.* Si le auerement ne fuit r(eceu) issint perdreit il cez tenement de ques vnqe plee ne fut mu<sup>11</sup> qe sereit duresse.

*Denoun.* Pur ceo suwe<sup>12</sup> deuers le vic(omte) pur la deseite. et sur la defaute nous prioms s(ei)s(ine) de tere.

Iudicium.

*Scrop Iust.* Si nous agardassoms s(ei)s(ine) de la<sup>13</sup> tere <sup>14</sup>qe sire Ion tient<sup>14</sup>: nous serioms <sup>15</sup>disseisours par nostre iuggement par quei etc.

Alendemeyn suruint<sup>16</sup> le dist sire<sup>10</sup> Iohan<sup>8</sup> et le d(emaun)daunt. fuit d(emaun)de. et ne vient pas par quei <sup>17</sup>vn nonsuete fut agarde etc.<sup>17</sup>

<sup>18</sup>Si ieo porte bref vers .A. des tenemenz dount .ff. est tenant et recouere: ff. recouera vers moi par assise.<sup>18</sup>

III.<sup>19</sup>

Celi qe clama fe droit e franktenement pria estre receu.

Robert fiz lamberd porta bref de entre vers vn T. qi fist defaute apres defaute.

*Den.* pria seisine.

*Pass.* Veez ci vn I. qi vous dit qil este seisi de ces tenemenz en son demesne com de fe et de droit et fu le ior du bref. issint qe T. qi fet defaute nad ren nenaueit etc. prest sumes a trouer surte des issuz tantqe nostre dit seit auere. et prioms qe null iugement se face.

*Den.* Nostre bref ne pout estre gar(rant) a pleder ou vous.

<sup>1</sup> vint *R.*    <sup>2</sup> conisaunse *R.*    <sup>3</sup> mustra *R.*    <sup>4-4</sup> etroua *R.*    <sup>5</sup> *Add*: apres  
*R.*    <sup>6</sup> T. *R.*    <sup>7</sup> *Add*: nous *R.*    <sup>8</sup> I. *R.*    <sup>9</sup> reauereit *R.*    <sup>10</sup> Om. *R.*  
<sup>11</sup> meu (or nien ?) *R.*    <sup>12</sup> syuez *R.*    <sup>13</sup> Interlined *P.* Om. *R.*    <sup>14-14</sup> etc.  
*R.*    <sup>15</sup> *Add*: tenuz *R.*    <sup>16</sup> vint *R.*    <sup>17-17</sup> il fut noun suy *R.*    <sup>18-18</sup> This  
appears only in *P*, and is omitted in *R*. In *P* it seems an addition after the next  
case had been inserted. The addition is in two lines, between the last line but  
one of this case and the first line of the next case. The last line of this case occupies  
about two-thirds of the space of a line and the rest is filled by the two lines of the  
addition.    <sup>19</sup> From X.

he in whose person the fee and the right and the freehold were, came upon the conusance and challenged the fine, and showed the Court the manner of his tenancy, and tendered an averment of it and found surety, etc. And he was received. The same applies in this case, since we are tenant etc., and Thomas the son of Bernard never had (any) estate in the tenements. Judgment whether by his default you can oust us from our tenancy. And on the other hand, even if you recovered seisin by judgment made upon the default of Thomas etc., Robert would have his seisin back by writ of deceit.

Dycon.<sup>3</sup>

Likewise  
quere  
whether I  
can disturb  
the sheriff  
from de-  
livering the  
seisin, for if  
another has  
entered  
upon such a  
judgment  
I can use  
an assize  
of novel  
disseisin.

BEREFORD C.J. Do you want the averment?

*Denom.* I cannot be party to any averment so far as he is concerned, for he is not named in the original.

BEREFORD C.J. If the averment were not received he would thus lose his tenements of which a plea was never started,<sup>1</sup> and that would be a hardship.

*Denom.* Therefore let him sue against the sheriff for the deceit. And upon the default we pray seisin of the land.

SCROPE J. If we awarded seisin of the land which Sir John holds, we should be disseisors by our judgment, wherefore etc. Judgment.

On the morrow the said Sir John came and the demandant was called and did not come, wherefore a non-suit was awarded etc.

<sup>2</sup>If I bring against A a writ for tenements whereof F is tenant and (I) recover, F will recover against me by assize.<sup>2</sup>

### III.

One who claimed fee right and freehold prayed to be received.

John Lamberd brought a writ of entry against one Thomas, who made default after default.

*Denom* prayed seisin.

*Passeley.* See here one Robert who tells you that he is seised of these tenements in his demesne as of fee and of right, and was (so seised) on the day of the writ, so that Thomas who makes default has nothing and did not have etc. We are ready to find surety of the issues until our statement be averred. And we pray that no judgment be made.

*Denom.* Our writ cannot be a warrant to plead with you.

<sup>1</sup> Or, moved.

<sup>2-2</sup> See note 18-18 on the opposite page.

<sup>3</sup> Is Dycon a reference to the case quoted as a precedent in the text?



*Pass.* Vne femme qi tint a vol(onte) vol(eit) auer rendu certeinz tenementz par fin. vint vn T. enqi chescun manere destat demura et mostra son estat et troua surte des issuz et fu receu.

*Ber. a Den.* Volez lauerement. qar si nous donoms iugement pur vous nous seroms disseisours.

*Quare non fuit prosequens.*

#### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 146 recto. Kent.  
Written by Burnedisshe.

Iohannes Lamberd de Bledelawe Hugo Walterus et Ricardus fratres eiusdem Iohannis et Iohannes le Pee Hugo et Ricardus fratres eiusdem Iohannis le Pee et Willelmus frater Ricardi Frebern per predictum Iohannem Lamberd attornatum suum optulerunt se iij die uersus Thomam Fiz Bernard de placito octo parcium vnus mesuagii duodecim acrarum et vnus rode terre cum pertinenciis in Tonge iuxta Tonham que iidem Iohannes et alii in Curia hic clamant ut Ius suum etc.

Et ipse non venit Et alias fecit defaltam hic scilicet a die Pasche in quinque septimanis proximo preterit(is) Ita quod tunc preceptum fuit vicecomiti quod non omitteret propter<sup>1</sup> de Middiltone quin caperet in manum domini Regis predictas octo partes etc. Et diem etc. Et quod summoneat eum quod esset hic ad hunc diem.

Et vicecomes modo testatur diem capcionis et quod summonuit etc.

Et super hoc veniunt quidam Robertus de Shir lond Laur(encius) de Horpyndone et Dyonisia filia Iohannis de Horpyndone Et idem Robertus dicit quod ipse modo tenet predicta tenementa ex feoffamento predictorum Laur(encii) et Dyonisie Et iidem Laurencius et Dyonisia hoc bene concedunt. Dicunt eciam iidem Robertus Laur(encius) et Dyonisia quod predictus Thomas nichil habet in predictis tenementis nec vncquam aliquid habuit in eisdem set predicti Laur(encius) et Dyonisia tenuerunt tenementa illa die impetracionis breuis Et hoc pretendunt verificare sicut Curia considerauerit. Offerunt eciam inuenire sufficientem securitatem ad respondendum de exitibus medii temporis si etc.

Postea predictus Iohannes et alii non sunt prosecuti. Ideo tam predictus Thomas quam predicti Robertus et alii inde sine die Et predicti Iohannes Lamberd et alii et plegii sui de prosequendo in misericordia Querantur nomina plegiorum etc.

<sup>1</sup> *Suppl.* libertatem.

*Passeley.* A woman who held at will would have rendered certain tenements by fine. There came one T. in whom was every kind of estate, and showed his estate, and found surety of the issues, and was received.

BEREFORD C.J. to *Denom.* Do you want the averment? For if we give judgment for you we shall be disseisors.

Therefore he was non-suited.

#### Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 146 recto. Kent.  
Written by Burnedisshe.

John Lamberd of Bledlow, Hugh,<sup>1</sup> Walter, and Richard, brothers of the said John, and John le Pee,<sup>2</sup> Hugh and Richard brothers of the said John le Pee, and William the brother of Richard Frebern, by the said John Lamberd, their attorney, presented themselves on the third day against Thomas Fitz-Bernard in a plea for eight parts of one messuage twelve acres and one rood of land with the appurtenances in Tonge near Tongham which the said John and the others claim in this Court as their right etc.

And he has not come. And before now he made default, to wit, in five weeks from Easter last past, so that at that time the Sheriff was commanded that he omit not because of the liberty of Middleton to take into the hands of our Lord the King the said eight parts etc., and the day etc. And that he summon him to be here at this day.

And the Sheriff now certifies the day of the taking, and that he summoned him etc.

And thereupon come one Robert of Shirlond, Lawrence of Horpyndone, and Denyse daughter of John of Horpyndone, and the said Robert says that he now holds the said tenements by the feoffment of the said Lawrence and Denyse. And the said Lawrence and Denyse fully admit this. The said Robert, Lawrence, and Denyse also say that the said Thomas has nothing in the said tenements, nor did he ever have anything in them, but the said Lawrence and Denyse held those tenements on the day of the purchase of the writ. And this they offer to aver as the Court may consider. They also offer to find sufficient surety to answer for the issues of the meantime if etc.

Afterwards the said John and the others did not prosecute. Therefore as well the said Thomas as the said Robert and the others hence without day, and the said John Lamberd and the others and their pledges for prosecution in mercy. Let the names of the pledges be sought for etc.

<sup>1</sup> Hugh Lamberd was nominated as the attorney in England of Henry Spigurnel when that judge crossed over to the Channel Islands on the King's service in 1323 (*Cal. Pat.* 1321-24, p.324).

<sup>2</sup> John le Pee of Ypres brought an action of account against Bernard Bedwred, formerly his receiver, early in 1312. Bernard failed to appear, but was not put in default because he was on the King's service (*Cal. Close* 1307-13, p. 398).



71. KNUTTONE v. FITZNICOLAS.<sup>1</sup>I.<sup>2</sup>*Entre ad terminum qui preteriit.*

Vn Richard porta son bref dentre *ad terminum qui preteriit* vers vne Alice qe voleit qele nauoit entre si noun pus le les qe T. son pere fist a vn Nicol et a Sare.

Alis fist defaute apres defaute suruint vn Wauter qe dist qele naueit rien forge a terme de sa vie de son les. et pria destre receu etc.

*Scrop.* Qei auez du les.

*Wilby* mist auant vne endenture qe tesmoigneit qe W. auoit lesse etc. a A. a terme de sa vie etc.

*Scrop.* Depus qe la charte qe mettet auant est vostre fet demeyne et nest pas euidence issint qe la charte put doner fay a tiel fait et vous ne mustrez autre chose iugement etc.

*Wylbi.* T. vostre pere enfeffa N. nostre Ael qi heir etc. par ceste charte et oblig(a) ly et sez heirs a la garrantie et si nous fussoms enplede etc. iugement si encontre son fait puissez rien demaunder.

*Scrop.* Tant amounte qe le les ne se fist mie etc. et nous voloms auerrer nostre bref.

*Berr.* Il met auant le fait vostre Auncestre a qey il couent qe vous r(espondiez) etc.

II.<sup>3</sup>*Ad terminum qui preteriit.*

Vn Richard porta Bref dentre vers Alice supposant lantre peus le lees qe T. son piere fist a vn Nichole et Sare a terme qe passe est. Alice fist defaute apres defaute, vynt vn Wauter et dist qe Alice tynt a terme de vye de son lees la reuersion a luy et pria destre receu etc.

*Scrop.* Quey auez del lees.

Wauter mostra endenture del lees et fust receu et dit par

*Wilb.* qe T. piere <sup>4</sup>la demaundant<sup>4</sup> enfeffa W. ael Wauter en fee simple et obligea etc. par ceo fet. Iugement si rien pusez demaunder.

*Scrop.* Taunt amounte qe le lees ne se fist pas a terme prest etc. nostre Bref.

*Tamen* il fust chace de respondre al fet par *Berford*.

<sup>1</sup> Reported by *F*, *X*.<sup>2</sup> From *F*.<sup>3</sup> From *X*.<sup>4-4</sup> Interlined.

71. KNUTTONE *v.* FITZNICOLAS.

## I.

*Entry ad terminum qui præterit.*

One John brought his writ of entry *ad terminum qui præterit* against one Margery (and the writ) said that she had no entry save after a lease which Roger his father had made to Nicolas and to Agnes.

Margery made default after default, there intervened one Richard and said that she had nothing save for term of her life by his lease. And he prayed to be received etc.

*Scrope.* What (evidence) have you of the lease?

*Willoughby* put forward an indenture which witnessed that Richard had leased etc. to Margery for term of her life etc.

*Scrope.* Judgment etc., since the charter which you put forward is your own deed and is not evidence, so that the charter could not give validity to such a deed, and you do not show anything else.

*Willoughby.* Roger your father by this charter enfeoffed Nicolas our grandfather whose heir etc., and bound himself and his heirs to the warranty, and if we were impleaded etc. Judgment whether you can demand anything against his deed.

*Scrope.* It amounts to this that the lease was not made etc., and we are willing to aver our writ.

BEREFORD C.J. He puts forward the deed of your ancestor and to that you must answer etc.

## II.

*Ad terminum qui præterit.*

One John brought a writ of entry against Margery, supposing the entry after the lease which Roger his father made to one Nicolas and Agnes for a term that is past. Margery made default after default, there intervened one Richard and said that Margery held for term of her life, by his lease, the reversion to him(self). And he prayed to be received etc.

*Scrope.* What (evidence) have you of the lease?

Richard showed (an) indenture of the lease, and was received, and said by

*Willoughby*, that Roger father of the demandant enfeoffed Nicolas, grandfather of Richard, in fee simple, and bound etc. by this deed. Judgment whether you can demand anything.

*Scrope.* It amounts to this, that the lease was not made for term. Ready (to aver) our writ.

Nevertheless he was driven by BEREFORD C.J. to answer to the deed.



## Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 40 recto. Staffordshire.  
Written by Burnedisshe.

Iohannes filius Rogeri de Knuttone per Rogerum de Potemor attornatum suum optulit se iiij. die uersus Margeriam que fuit vxor Ade filii Nicholai de Nouo Castro subtus Lymam de placito quatuor acrarum terre cum pertinentiis in villa Noui Castri subtus Lymam quas clamat esse ius et hereditatem suam et in quas eadem Margeria non habet ingressum nisi post dimissionem quam Rogerus filius Rogeri de Knutone pater predicti Iohannis cuius heres ipse est inde fecit Nicholao filio Henrici et Agneti vxori eius ad terminum qui preteriit et que post terminum illum ad prefatum Iohannem reuerti debent etc.

Et ipsa non venit et alias fecit defaltam hic scilicet a die Pasche in xv dies proximo preteritos postquam comparuit hic in curia etc Ita quod tunc preceptum fuit vicecomiti quod caperet predicta tenementa in manum domini Regis etc et quod summoneret eum (*sic*) quod esset hic ad hunc diem scilicet In Octabis sancti Michaelis aud(ituram) inde iudicium suum etc.

Et vicecomes modo testatur quod terra capta est et quod summonuit etc.

Et super hoc venit quidam Ricardus filius Ade filii Nicholai de Nouo Castro subtus Lymam Et dicit quod predicta tenementa sunt ius et hereditas sua Et quod eadem Margeria nichil habet in eisdem nisi liberum tenementum ad terminum vite ipsius Margerie ex dimissione predicti Ricardi vnde petit quod ipse per defaltam ipsius Margerie non amittat ius suum etc set quod ad defensionem predictorum tenementorum admittatur.

Et admittitur.

Et Idem Ricardus defendit ius suum qu(ando) etc Et dicit quod cum predictus Iohannes per breue suum suppon(at) predictum Rogerum filium Rogeri patrem etc. dimisse (*sic*) predicta tenementa predictis Nicholao filio Henrici et Agneti vxori eius ad terminum qui preteriit, idem Rogerus dimisit tenementa illa predicto Nicholao filio Henrici auo ipsius Ricardi Tenenda sibi et heredibus suis in feodum Et obligauit se et heredes suos ad war(antizandum) etc.

Et profert quandam cartam sub nomine predicti Rogeri filii Rogeri que hoc testatur, vnde dicit quod si ipse ab aliquo alio inde implacitatus fuerit predictus Iohannes tanquam heres predicti Rogeri patris etc. teneretur tenementa illa ei war(antizare) etc.

Et Iohannes dicit quod ipse pretextu predicte carte ab accione excludi non debet in hac parte quia dicit quod carta illa non est factum predicti Rogeri filii Rogeri patris etc Et hoc petit quod inquiratur <sup>1</sup>per patriam quia testes nominati in predicta (*sic*) obierunt.<sup>1</sup>

Et predictus Ricardus filius Ade similiter

<sup>1-1</sup> Interlined.

## Note from the Record.

De Banco Roll 195a, Mich. 6 Edw. II., membr. 40 recto. Staffordshire.  
Written by Burnedisshe.

John the son of Roger of Knuttone, by Roger of Potemor his attorney, presented himself on the fourth day against Margery wife that was of Adam the son of Nicolas of Newcastle-under-Lyme in a plea of four acres of land with the appurtenances in the vill of Newcastle-under-Lyme, which he claims are his right and inheritance and in which the said Margery has no entry save after the lease which Roger the son of Roger of Knuttone, father of the said John, whose heir he is, thereof made to Nicolas the son of Henry and to Agnes his wife, for a term which has expired, and which after that term ought to revert to the said John etc.

And she has not come, and before now she made default, to wit, on the quindene of Easter last past, after she had put in an appearance in this Court etc. So that at that time the sheriff was commanded to take the said tenements into the hand of our Lord the King etc., and to summon her that she be here at this day, to wit, on the octaves of Michaelmas, to hear her judgment in this matter.

And the sheriff now certifies that the land is taken and that he summoned etc.

And thereupon comes one Richard the son of Adam the son of Nicolas of Newcastle-under-Lyme and says that the said tenements are his right and inheritance and that the said Margery has nothing in them save freehold for the term of life of the said Margery, by the lease of the said Richard, whence he prays that by the default of the said Margery he lose not his right etc., but that he be admitted to defend the said tenements.

And he is admitted.

And the said Richard defends his right when etc., and he says that whereas the said John supposes by his writ that the said Roger son of Roger, father etc., leased the said tenements to the said Nicolas the son of Henry and to Agnes his wife for a term which has expired, the said Roger leased the said tenements to the said Nicolas the son of Henry grandfather of the said Richard, to be held to himself and his heirs in fee, and (Roger) bound himself and his heirs to warrant etc.

And he puts forward a charter under the name of the said Roger the son of Roger, which witnesses this, and concerning this matter he says that if he were impleaded in this matter by someone else the said John as heir of the said Roger father etc. would be bound to warrant him the said tenements etc.

And John says that by reason of the said charter he ought not to be precluded from an action in this matter, for he says that that charter is not a deed of the said Roger the son of Roger, father etc. And he prays that this be inquired by the country, because the witnesses named in the said (charter) are dead.

And the said Richard the son of Adam likewise.



**Note from the Record**—*continued*.

Ideo preceptum est vicecomiti quod venire faciat hic in Octabis sancti Hillarii xii etc per quos etc Et qui nec etc ad recognoscendum etc Quia tam etc.

Et super hoc predictus Ricardus inuenit manucaptos ad respondendum de exitibus medii temporis si contingat predictam iuratam contra ipsum transire scilicet Radulphum de Grendone de Comitatu Staff(ord), Thomam de Dottone de eodem Comitatu et Iohannem de Oxonforde de eodem Comitatu etc.

Et predictus Ricardus posuit loco suo Radulphum de Grendone vel Thomam de Wottone (*sic*) uersus predictum Iohannem filium Rogeri de predicto placito etc.

**Note from the Record**—*continued*.

Therefore the sheriff was commanded that he cause to come here on the octaves of St. Hilary twelve etc. by whom etc. and who are neither etc. to find etc. because both etc.

And thereupon the said Richard found sureties to answer for the issues of the mean time if it should happen that the said jury should find against him, to wit, Ralph of Grendone from the county of Staffordshire, Thomas of Dottone from the same county and John of Oxonforde from the same county etc.

And the said Richard put in his place Ralph of Grendone or Thomas of Wottone against the said John the son of Roger in the said plea etc.



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| <p><b>1. Mowbray v. Benet</b> . . . . . 1</p> <p>The demandant brought a writ of right against a man and his wife. A third party asked to be received because the tenants were holding from him for life. He was received and tried to abate the demandant's writ on the ground that the latter had been non-suited for default. The demandant's counsel objected that only two of the tenants in the case had been dismissed without day, but not the third, and as there were three distinct precipes in the writ the non-suit in regard to two of them does not dispose of the third. After some hesitation on the part of the Chief Justice this was allowed by the Court.</p> <p><b>2. Anon.</b> . . . . . 7</p> <p>In a plea of land entertained in the husting of London a stranger was vouched to warrant, summoned to do so in the Bench, and did warrant. He was to be summoned to the hustings, and in case of his default to appear the case had to proceed in the Bench.</p> <p><b>3. Anon.</b> . . . . . 8</p> <p>In a writ of right brought by a man against his elder brother said to be born out of wedlock, the latter relied</p> | <p>on his seisin as son and heir. The parties came to an agreement.</p> <p><b>4. Tilton v. Davy</b> . . . . . 8</p> <p>A widow brought a writ of dower against a woman holding land as tenant for life. The tenant offered to aver that the demandant's husband was not seised of the land at the time of the wedding. A fine levied between the deceased husband of the demandant and the tenant, by which the tenements were recognised to be the fee of the former and granted to the latter for term of life, was pleaded in bar. The demandant offered to aver that at the time of the conusance she was the wife of the conusee. Thereupon the tenant vouched to warranty the son of the deceased conusee, who was under age. The demandant in the case was summoned and stood to warranty, but denied having enough by right of nurture to satisfy her claim for dower.</p> <p><b>5. Le Power v. The Dean and Chapter of St. Ethelbert's, Hereford</b> . . . . . 25</p> <p>Dower was claimed against a Dean and Chapter who held the land by Statute Merchant. They vouched the debtor to warrant, but he failed to appear. Judgment is given against</p> |
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them, but they claimed an equivalent on account.

**6. Stodlay v. Cotyngham . . . . . 26**

In Dower, the tenant's son, as reversioner, proffers a fine by which the demandant's husband and herself recognised the tenements of which a third part is claimed to be the fee and right of the reversioner's father. It was objected that the demandant at the time of the fine had nothing in the tenements except as wife. Issue was joined on the question whether she had freehold as a joint tenant or not.

**7. Le Veel v. Berkeley . . . . . 31**

In Dower the tenant pleaded that he was not obliged to give dower, because the demandant has removed the infant heir, whose marriage he ought to have, from his custody. The demandant replied that she did not do so, but that the infant heir was removed by a lord, who claimed wardship by reason of certain tenements held from him by knight service.

**8. Brynkele v. Le Vaunere and Whitefelde . . . . . 33**

A widow claiming dower warranted to the tenants certain tenements granted to them by her late husband. She was awarded dower in the first instance from any tenements which she may have in nurture as the guardian of her infant son. Failing these, dower would be assigned to her from the land of the tenants who should be indemnified by the heir on the latter's coming of age.

**9. De la Sale v. Bloxham and Miltecombe . . . . . 35**

In Dower, warranty was pleaded and entered into for two parts of the tenements mentioned in a charter. As for the third part, it was asserted by the guarantor that the deceased husband was never seised. The Court laid it

down that the donor was only obliged to warrant in case the donee had obtained seisin.

**10. Anon. . . . . 37**

In Dower, view is refused to the husband of the tenant because he ought to have known of what tenements his wife was seised.

**11. Fitzjohn v. Esteneye and Lovel . . 37**

In Dower, warranty was refused to the tenant because the manor from which dower was claimed had been recovered from the husband of the demandant in an assize of novel disseisin.

**12. Anon. . . . . 43**

Dower was refused to the second wife of a tenant in tail. Counsel for the demandant pleaded that at Common law she would have been entitled to dower and that the Statute of Westminster 2 (c. 1) did not deprive her of the right. It was contended on the other side that the heir of the donee of fee-tail in the descender ought to enter without interruption of his estate, and this view was approved by the judges.

**13. Asmore v. Bridlington (Prior of) . 45**

Dower of a rent-charge is claimed by the widow of a man whose father had been granted the rent-charge of which her husband had been seised. It is objected by the tenant that as to the next issue the rent was to be extinct during the nonage of the heir. The Court awarded that the demandant should receive her dower, but that she should take nothing during the nonage of the heir.

**14. Peres v. Thusaut . . . . . 46**

A man had enfeoffed his eldest son in fee tail with reversion to himself. This son died without issue;



the father succeeded as reversioner and endowed the widow of the deceased son with her dower. On the death of the father his widow demanded dower out of the eldest son's inheritance. The younger son, who had succeeded his father, refused to warrant, on the ground that he would give up too much of the inheritance. The Court decides against him.

**15. Heslarton v. Salvayn . . . . 48**

In an assize of last presentation the tenant objected that his ancestor purchased the manor to which the advowson was appendant from the ancestor of the demandant and that he ought not to be debarred from claiming seisin from the time of the feoffor on account of presentations made while the tenements in question were held in dower by his widowed mother. The demandant's counsel argued that the Statute of Westminster II. c. 5 does not apply to purchasers or their issue, but only to the heirs, and that the presentations on which the demandant relied took place before the Statute. The litigation ended by the recognition of the demandant's right on the part of the tenant.

**16. De la Zusche v. Beaumont . . . 59**

In an assize of last presentation the heir of the lady who last presented claimed the patronage. It was objected by the successors of a younger sister that the patronage descended to three sisters as parceners and that after presentations by the eldest and by the second the heirs of the third had the right to present in their turn. Counsel for the successors of the second sister offered to aver that the tenements and advowsons had been partitioned between the sisters, and that nevertheless the eldest had got hold of an advowson which did not belong to her, in time of war, when it was impossible to oppose her usurpation. The case was adjourned from term to term.

**17. The Abbot of Battle v. The Archbishop of Canterbury . . . 67**

The right of the claimant in an assize of last presentation was not contested, but a reservation is made as to the right of the diocesan.

**18. The Prior of Linton v. The Bishop of Ely . . . . 68**

In an assize of last presentation by a prior it is objected that he is a monk removable at the will of an Abbot, and that if he claims as parson he should have been named as such in the writ. The Chief Justice's view was that the office of parson should be mentioned in case tenements are claimed in right of the church, but not in the case of the vicarage.

**19. The Parson of Meppershall v. The Prior of Chicksands . . . 70**

An assize *utrum* is brought by a parson against a prior to ascertain whether a certain acre with appurtenances belongs to the church of the parson in free alms or is the lay fee of the prior. The tenant denies the seisin of the demandant's predecessor, but is met by the objection, upheld by the Court, that the writ used aims at trying the right and not possession.

**20. The King v. The Prior of St. James and Walda . . . . 73**

A *Quare impedit* was brought on behalf of the King against an abbot because a church of which the advowson was in the gift of the abbey had been appropriated by the predecessor of the abbot. The latter objected that the appropriation of the church, being a spiritual matter, does not justify a claim to the advowson which is a temporal matter, and that the tenements to which the advowson was appendant had not been granted by the King, but by a private donor. On behalf of the King it is replied that the Abbey itself was a Royal foundation, and that through the appropriation the King might lose

occasions to present during vacancies in the Abbey. Subsequently the action on behalf of the King was dropped.

**21. The King v. The Archbishop of York and Wyrkeshale . . . 83**

A *quare impedit* in which the defendant reserves his right as metropolitan and ordinary.

**22. Latimer v. Stapeltone . . . 85**

In a *quare impedit* the defendant pleads that the plaintiff had been nonsuited in a former trial as to the same advowson. The plaintiff replies that the nonsuit was awarded for default on his part, and that the defendant in the present case had failed to make good his claim in substance against the representative of the plaintiff's sister. The advowson was appendant to a tenement that had descended to four sisters as one heir, and it had been agreed to take the advowson in turn: the defendant's claim, derived from the purparties of the third and of the fourth sister, had to make way for the claims of the issue of the two elder sisters. The judge in the former trial had decided on the ground of the present plaintiff's default, but had subsequently ascertained the facts from the rolls of a plea won by the representative of the eldest sister, and had declined to order the execution of the award. In the present instance, however, the Court held that as judgment had been given once in a trial between the same parties as to the same subject the plaintiff's writ would abate.

Eventually the parties came to terms, the defendant recognising the plaintiff's right and paying damages.

**23. Mortimer v. Thorpe . . . 91**

Writ of waste. The plaintiff counted that a tenant in dower committed waste in various ways, among other things by digging turf. The defendant pleaded that there was a discrepancy between the count and the writ, as no turbary

had been mentioned in the writ. The latter was awarded good nevertheless.

**24. Kyme v. Donecastre . . . 96**

In an action against a tenant for life waste was found by an inquest, and the defendant made default, but a third person prayed that no judgment should be made, because the tenements were in the hands of the executors of a creditor of a former tenant under Statute Merchant for the payment of a debt. The Court declined to proceed on the writ against the tenant for life, but the Chief Justice advised the plaintiff to apply to the Chancery for another writ.

**25. Bouille v. Coggeshale . . . 97**

In replevin the plaintiff counted that the taking had taken place long after the purchase of the writ. An irreplevisable return was awarded to the defendant.

**26. Dalazon v. Sauntone . . . 99**

In an action of replevin the plaintiff claimed by prescription the right of having free boar throughout the whole of a vill of which he held a moiety. The defendant avowed the taking on the ground that he was the lord of that part of the vill where the boar was found damage feasant. The Court held that the plaintiff cannot rely on prescription outside his lordship, and ought to justify his claim by specialty or by allowance of corresponding profits.

**27. Giffard v. Craunford . . . 104**

In replevin the defendant avowed the taking of beasts as damage feasant in a field which, though common when lying fallow, was held by him in severalty when sown. The plaintiff asserted that the beasts were in his common.

**28. The Prior of Maiden Bradley v. Waspre . . . 107**

The defendant in an action of replevin avowed the taking for the



purpose of distraining the plaintiff to perform fealty. The plaintiff asserted that he did tender fealty, but was not received. The defendant replied that he did not tender it simply, but on condition that he should be exempted from other services.

**29. Clement v. The Abbot of Lilleshall and Shertone . . . . . 112**

In replevin the defendant pleaded that the beasts of the plaintiff were found damage feasant in a pasture belonging to the defendant. The plaintiff asserted that the pasture in question is a common appendant to the burgage tenements of the town of Shrewsbury, as can be established by prescription. The defendant's counsel pleaded that a common could not be appendant to a burgage tenement, because such a common could not be admeasured, but this plea was not allowed by the Chief Justice.

**30. Dene v. Drosey . . . . . 116**

In replevin the defendant avowed on the ground of distress for suit of court in arrear. The plaintiff produced the charter of feoffment by which the tenement was granted to his ancestor by services certain, without mention of the suit. The defendant offered to aver that his ancestors were seised of the suit of court from a time of which memory does not run, but this was not allowed by the Court, on account of Stat. Marlbr. c. 9.

**31. Becard v. Eueringham and others ; Eueringham v. Becard and others ; Chapman v. Becard and others ; Bottleford v. Becard and others . . . . . 121**

In replevin the taking was avowed by the defendants on the ground that the beasts were found damage feasant in a wood belonging to the principal defendant. The plaintiffs asserted that the wood is a 'balker' between two adjoining and undivided villis.

**32. Pomelesburne v. The Bishop of Ely and another ; Hayward v. The Bishop of Ely and others ; Louth v. the Bishop of Ely and others 125**

In replevin the taking was avowed on the ground of goats and sheep having been found damage feasant in the defendant's park. The plaintiffs claimed common appendant with all manner of beasts.

**33. Trafford v. Radcliffe . . . . . 129**

In replevin the defendant avowed the taking of a cow as distress for arrear of fealty. The plaintiff challenged his right to services because he was a strange purchaser and did not produce any evidence by way of fine or charter. It was objected on the part of the defendant that the plaintiff had attorned and that the defendant was seised of services. The Court held that the exception pleaded by the plaintiff was inadmissible, as it ought to have been made before the attornment.

**34. Anon. . . . . 132**

In replevin, on the defendant avowing the taking on the ground of damage in his several, it was objected by the plaintiff that the field where the beasts were taken is common to the commonalty of the vill from Good Friday to Trinity.

**35. Query. . . . . 132**

Can one distrain for services by beasts flying from one's fee ?

**36. Conestable v. Feure . . . . . 132**

In a writ *de nativo habendo*, the plaintiff counted on the strength of villain services, and produced the native relatives of the defendant.

**37. Walter v. The Prior of Launceston and others ; Balger v. The Prior of Launceston and others ; Martin (of Tremur) v. The Prior of Launceston and others . . . . . 134**

In three cases the writs were based on Stat. Marlbr. c. 15. The plaintiffs

counted that their beasts were taken by the defendants outside the fee of the latter. The defendants justified the retention of the beasts on the ground that returns irreplevisable were awarded to them in actions for replevin by default of the plaintiffs. For the plaintiffs it was maintained that the judgments referred to were delivered against other persons and on other occasions.

**38. Saxlingham v. Attewood and others 142**

In trespass the defendant avowed the taking of a mare, but pleaded that he was the bailiff of a lord for a certain hundred, and that he had to distrain the plaintiff, who had failed to appear at the summons of the hundred. The plaintiff replied that the bailiff distrained outside his hundred. The defendant then pleaded in abatement of the writ, which should have been not a writ of trespass, but a *replegiari*. The Chief Justice laid it down that either of the two writs could be used, but that if the inquest found that there was good cause for distress the defendant should not be punished for trespass *vi et armis*.

**39. Anon. v. Leclerc and others . . . 151**

In an action of trespass for imprisonment, battery and taking of goods the principal defendant opposed the exception of villainage against the plaintiff, as bailiff of the lord. The plaintiff denied villainage. The defendant prayed aid from the lord as to the personal status of the plaintiff, but was refused aid by the Court.

**40. Tyk v. Franceys and another . . . 152**

In trespass the plaintiff counted that the defendants carried away his goods. The defendants pleaded that they had taken the goods as executors of the plaintiff's wife and with his assent. The plaintiff denied having given his assent and challenged the defendants to produce specialty. The Court drove him to join issue with the

defendants as to the making of the will and as to the division of goods.

**41. Peynton v. Musket . . . 153**

The action was brought for the debt of a deceased wife. The defendant began by pleading that it was impossible to try the issue by averment, by oath, or by examination of the suit on account of the death of the wife. This was contested by the plaintiff in view of procedure in analogous actions. Subsequently the defendant waived the procedural objection and rested his case on two arguments—(1) that a contract made by the wife under coverture does not bind the husband; (2) that a person could not be liable for a debt which he had not contracted. The plaintiff replied that if the husband had profited by the transaction he must assume responsibility for it. The award of the Court goes against the plaintiff, because he had counted directly against the husband.

**42. Anon. . . . . 156**

In an action of debt against three obligees, one confessed the debt, whereupon execution for the whole sum was claimed by the plaintiff. The Court held that if one of the debtors paid part of the sum, the others should be relieved *pro tanto*, but if two of them were unable to pay, the third would be charged with the whole.

**43. Vernon v. Brun . . . . . 157**

In an action for suit to a mill the tenant asked for a view, but this is refused by the Court because the action was based on an allegation as to his own wrong-doing.

**44. The Bishop of Carlisle v. Mulcastre 159**

The Bishop as parson of a church claimed common in a moor. The tenant conceded the common except during the time from Candlemas to All Saints.



**45. Pykeringe v. The Prior of Watton . 162**

The plaintiff recovered an annuity with damages.

**46. De la Forde v. The Earl and Countess of Warwick . . . 164**

It was objected to a claim of annuity that the grantor was within age. The issue had to be tried by a jury from the county where the deceased grantor was born.

**47. Lyndeseye v. Suthe . . . 166**

In an action of detinue of charter, the plaintiff counted that the charter, which ought to be in her possession by right of inheritance from her grandfather, has been appropriated by the defendant. The latter pleaded that the charter was delivered to her together with her tenements and that she ought to keep it in order to make sure of warranty. By award of the Court the charter was to be in the keeping of the party which received it from the former owner. Issue was joined as to this question.

**48. Le Crost v. Holme . . . 168**

In an action of mesne the defendant refused to acquit his tenant in regard to certain services for which the latter was distrained by the King, because the plaintiff did not recognise other services which he owed to the lord. The defendant's protest as to outstanding services is entered on the roll, and issue was joined on the question whether the plaintiff has been distrained by reason of the defendant's default.

**49. The Bishop of Exeter v. Thomas the Archdeacon . . . 172**

The Bishop claimed wardship of a minor holding of his church by knight-service. The defendant's vouchee pleaded in abatement of the writ, because the right to the wardship had accrued in the time of the Bishop's predecessor, and the wardship itself, being a chattel, ought to be sued for by the latter's

executors. The Court agreed with the plaintiff's contention that as the Bishop's predecessor had not been seised of the matter in dispute it is a question of right, and the action had been properly conceived.

**50. The Bishop of Norwich v. Caxstone ; Bardulf v. Caxstone . . . 178**

In a trial as to wardship the defendant stated that she is ready to concede the wardship of the infant to the one of the three claimants whose right is recognised by the Court. The Bishop claimed on the strength of a tenancy held from the Bishop by the deceased father before he was enfeoffed by the infant's grandfather of land held from Bardulf's ancestor. Counsel for Bardulf urges that the tenement held from the lordship of Bardulf belongs to an older feoffment. The Chief Justice laid down that the right of a lord to the wardship and marriage of his tenants cannot be modified by subsequent purchases.

**51. Musgrave v. Eggesfeld . . . 183**

In an action of wardship the defendants pleaded a feoffment of the deceased father in justification of their retaining the land of the infant heir. The plaintiffs asserted that the feoffment was a fictitious one, designed to secure a lease made to the defendants. The latter conceded the claim.

**52. The Prior of Bromholm v. Gilbert and Wolsey . . . 186**

In a writ of ravishment of ward, although process was discontinued against two of the defendants, others had to answer.

**53. Fitzbenedict v. Fitzwalter . . . 188**

It is pleaded in an action of escheat that there is a right heir in the person of the deceased tenant's nephew. The demandant replied that the father of the tenant was a bastard, and issue was joined as to this matter.

**54. Anon . . . . . 189**

In an action of escheat the defendant, a widow, prayed aid from the heir of the former tenant, who was hanged for felony. The plaintiff objected on the ground that she can conduct the process herself. The Court allowed aid, because if she lost in a writ of right, the interest of the reversioner would be jeopardised.

**55. The Prior of St. Andrew's of York  
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**56. Bereford and Brandestone . . . 193**

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**57. Mortone v. Mortone . . . . . 195**

A person intervenes against a surrender by a fine as a reversioner on the ground that the conusor in the fine had no fee but held at will.

**58. Atte Gracechurch v. Selmerie . 197**

An assize of novel disseisin was brought by the heir of one sister against the heir of another sister on the ground that the latter was descended from the sister's stepson and altogether a stranger. The verdict of the assize went against the plaintiff.

**59. Anon . . . . . 199**

A fine was not received in evidence before the inquest, because it ought to have been pleaded in bar before issue was joined.

**60. Fitzsamuel v. Braythe . . . . . 199**

In a writ of ael it was claimed by the plaintiff that the defendants, though issued from a daughter of the deceased ancestor, were sons of her second husband, while by a custom of the borough in which the tenements were situate the latter ought to be partible only between the sons of the first

wife. Bereford held that such a custom in the case of a small vill would not necessarily be binding, unless the usage can be shown to have been applied between particular persons.

**61. Lucy v. Plukenet . . . . . 206**

In a writ of cosinage the demandant had omitted to name a female ascendant in tracing descent. Nevertheless the writ was held good, as it was sufficient to prove relationship in such a case.

**62. Tremur and others v. Giffard . 211**

In an action of cosinage the demandant made resort to his great-great-grandmother in order to establish his relationship with the deceased owner. It was objected that the degree of 'trisaïel' was outside the limit for claims of possession. The Court allowed the writ to stand, firstly, because one of the demandants derived his claim from the possession of a great-grandfather, and all the parties to the action ought to be allowed an equal standing; and secondly because the action was of cosinage and not of bisael, and the judges had received similar claims derived from the seisin of the great-grandfather at a time when the writ of bisael had not been introduced.

**63. Tychemershe v. de la Musche . 218**

It was objected against an action in cosinage that the tenant entered as son and heir. Issue was joined as to his legitimacy.

**64. Hertford v. Percy. . . . . 222**

In an action for ejectment before term completed the defendant pleaded that the term for which the lease had been made had run out, and that therefore the plaintiff ought to sue the heir of his lessor for damages by a writ of covenant. As the writ of ejectment had been brought within the term it was upheld by the Bench. Thereupon the defendant denied the lease, and issue was joined on this question,



although the plaintiff tried to get an averment on the fact of ejectment.

**65. Goldington v. Hardy . . . . 226**

In a case of ejectment before term completed the defendant refused to plead on the ground that the writ does not apply to him and ought to have been brought against the lessee for breach of covenant, while the latter should recover by assize against the stranger. The Court considered that the writ meets the case of ejectment by a stranger who had not obtained the frank tenement by purchase.

**66. Goldington v. Anon. . . . 227**

A writ of entry was brought on the ground that the party in possession had entered by purchase from a termor whose lease had expired. The defendants objected that they entered on the strength of a judgment pronounced in an assize against the termor and his lessors, who were the demandants in the present case.

**67. Le Daneys v. Pauncefoot . . . 230**

The tenant in an action of entry objected that the demandant had not been seised in the tenements on the day the writ was purchased. The demandant explained that the writ had been ante-dated by three weeks in the Chancery because the clerks did not know at the time of the purchase where the King was. Nevertheless the writ was abated.

**68. Erdington v. Burnel . . . . 234**

It was objected to a writ of entry after term expired that the demandant's father had enfeoffed the tenant's vouchee in fee simple. The plaintiff replied that the charter of feoffment had been drawn up as a security for the pay-

ment of a debt, to be kept by a friar, and that the demandant before he died, his executors and his heirs had repeatedly tendered payment. In proof of the covenant as to the debt an indenture was produced. The tenant's counsel maintained that the feoffment was in fee simple and not a lease for term of years and that no collateral convention could be produced against it. Eventually the tenant recognised the convention, but pleaded that the demandant's father had received further sums from him and in consequence of these loans had made another feoffment in his favour. Issue was joined on this point.

**69. Penleghe v. The Abbot of Bec Hellouin . . . . 243**

One cannot defend against a writ of entry by saying that the demandant leased in fee and not for a term of years.

**70. Lamberd and others v. Fitzbernard 244**

In an action of entry after term expired the tenant made default after default. Eventually a stranger intervened and prayed to be received to defend his right, because the tenant in the case had never been seised of the tenements. The demandant replied that he was not bound to plead against a stranger, but the Court decided that the intervener should be admitted to defend his right.

**71. Knuttone v. Fitznicolas . . . 248**

In a plea of entry on term expired, the tenant made default and a third party prayed to be received to defend his right, and was admitted on producing a lease made by him to the original tenant and a charter of feoffment made to his grandfather by the demandants' father.

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